

COUNCIL MEETING NOTICE/AGENDA

Posted on www.scdd.ca.gov

DATE: Wednesday, May 25, 2011

TIME: 10 a.m. – 5 p.m.

LOCATION: Holiday Inn
300 J Street
Sacramento, CA 95814
(916) 446-0100

Pursuant to Government code Sections 11123.1 and 11125(f), individuals with disabilities who require accessible alternative formats of the agenda and related meeting materials and/or auxiliary aids/services to participate in this meeting should contact Robin Maitino at (916) 322-8481 or email robin.maitino@scdd.ca.gov. Requests must be received by 5:00 pm, May 20, 2011.

**Denotes action items*

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| 1. CALL TO ORDER | L. Shipp |
| 2. ESTABLISHMENT OF QUORUM | L. Shipp |
| 3. WELCOME/INTRODUCTIONS | L. Shipp |
| 4. PUBLIC COMMENTS | |

*This item is for members of the public only to provide comments and/or present information to the Council on matters **not** on the agenda. Each person will be afforded up to three minutes to speak. Written requests, if any, will be considered first. The Council will provide a public comment period, not to exceed a total of seven minutes, for public comment prior to action on each agenda item.*

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10. EXECUTIVE DIRECTOR'S UPDATE	C. Risley	
11. ADJOURNMENT	L. Shipp	

DRAFT

Council Meeting Minutes March 16, 2011

Members Present

Jorge Aguilar
Jennifer Allen
Catherine Blakemore
Lisa Cooley
Ray Ceragioli
Shirley Dove
Max Duley
Denise Filz
Marcia Good
Robin Hansen
Megan Juring
Bill Moore
David Mulvaney
Oliva Raynor
Leroy Shipp
Steve Silvius
Jennifer Walsh
Kerstin Williams

Members Absent

Michael Bailey
Lora Connolly
Terri Delgadillo
Dean Lan
Patty O'Brien-Petterson
Emily Matlack
Tom Torlakson

Others Attending

Alva Barquero
Molly Kennedy
Cary Kreutzer
Jane Lefferdink
Angie Lewis
Robin Maitino
Dawn Morley
Roberta Newton
Carol Risley
Margaret Shipp
Rocio Smith
Mark Starford
Eric Zigman
James Shorter
Kecia Weller
Sarah Steenhausen
Barry Benda
Ellen Goldblatt
Nancy Dow Moody
Gabriel Rogin

1. **CALL TO ORDER/ESTABLISHMENT OF QUORUM**

Leroy Shipp, Chairperson called the meeting to order at 10:05 a.m. and established a quorum present at 10:10 a.m.

2. **WELCOME AND INTRODUCTIONS**

Council members and guests introduced themselves.

3. **PUBLIC COMMENT**

There were no public comments.

4. APROVAL OF JANUARY 19, 2011 MEETING MINUTES

It was moved/seconded (Mulvaney/Cooley) and carried to approve the January 19, 2011, Council meeting minutes with the following corrections/additions (2 abstentions):

- Add Megan Juring, California Health and Human Agency as present.
- Correct the spelling on Jorge Aguilar's name.

5. PEOPLE FIRST OF CALIFORNIA UPDATE

Kecia Weller, President, People First of California, provided the Council with an agency update, noting that the executive director position remains vacant at this time.

Kecia provided draft copies of the Youth Leadership book. She attended and presented on unlocking the power of books at a recent focus group at the UCLA Pathway Program. The focus group was geared toward 18-to-25 year olds.

Kecia also reported that she is a co-leader for the Self-Advocacy Summit, taking place on May 24-25, 2011. Melody Goodman and Kecia will be giving a presentation at the Summit.

6. PATIENT PROTECTION AND AFFORDABLE CARE ACT

Sarah Steenhausen, SCAN Foundation, gave a presentation entitled: Affordable Care Act (ACA) 2010 New Opportunities/New Challenges. The SCAN foundation is an independent nonprofit started in 2007 by the SCAN Health Plan that operates independently from the health plan. The goal of the SCAN Foundation is to improve the continuum of long term care so people can age with dignity, choice, and independence.

Sarah's presentation focused on the long term care components that are included in the Affordable Care Act. She provided an overview of the specific components and why they are critical and on new tools that have been implemented for long term care financing.

7. COMMITTEE REPORTS

a. STRATEGIC PLANNING

Olivia Raynor reported that Rocio Smith has agreed to step up and be the lead staff person in assisting the Committee in the process of putting together the State Strategic Plan. All of the area boards have completed their plans, the public hearing process is complete, and the Committee is now integrating the input and information into one the State Strategic Plan for the next five years.

The Subcommittee on Strategic Planning will be meeting as part of the upcoming Executive Committee meeting in April and in May will be coming back to the Council with a draft plan.

b. LEGISLATIVE AND PUBLIC POLICY

Ray Ceragioli reported on the Committee's recommended positions on bill's impacting persons with developmental disabilities as follows:

Assembly Bill 171 – Autism Spectrum Disorder: It was moved/seconded (Aguilar/Duley) and carried to support AB 171 as recommended.

Assembly Bill 181 – Mental Health Services: Foster Care: It was moved/seconded (Silvius/Dove) and carried to support AB 181 with amendments to reflect the right to refuse psychotropic medications as recommended.

Assembly Bill 39 – Special Education: Funding: It was moved/seconded (Good/Cooley) and carried to support AB 39 as recommended.

Senate Bill 121- Special Education: Incarcerated Minors: It was moved/seconded (Dove/Silvius) and carried to watch SB 121 as recommended.

Assembly Bill 170 – Regional Centers: It was moved and seconded (Aguilar/Boomer), to watch AB 170 as recommended. Motion failed (4 yes; 10 no; 2 abstentions). After further discussion, it was moved, seconded (Good/Dove) and carried to oppose AB 170 unless

amended to require an examination of the entire regional center infrastructure (2 abstentions).

Assembly Bill 154 – Health Care: It was moved/seconded (Boomer/Cooley) and carried to support AB 154 with amendments to eliminate the two-tiered system created by this bill as recommended (2 abstentions).

2011-12 Budget Trailer Bills – Proposed legislative changes to California statutes addressing various proposals in the 2011-12 Governor's Budget. It was moved/seconded (Blakemore/Hansen) and carried to adopt the recommended positions as amended as follows;.

- On page 133, the fourth bullet would be changed to say oppose language to eliminate or reduce adult day health care services, period.
- On page 134, the sixth bullet would be changed to say oppose standards that result in the reduction of needed services (3 abstentions).

c. EMPLOYMENT FIRST

Olivia Raynor reported on the Employment First Committee. She reminded the Council that through legislation, the Council is charged with having a standing committee on employment.

Thus far, the Committee has developed working groups that addressed topics such as, transition, employer practices, barriers, and incentives. The Committee is working on the draft report for Council to review in May. The delivery date for the first report is in July 2011.

d. CONSUMER ADVISORY

Jennifer Allen reported on the March 15, 2011 Consumer Advisory Committee meeting. The Committee continues to support the self advocates who sit on the Council to participate in meetings and provide them with information in plain language. The focus of

yesterday's meeting was how self-determination is the foundation of independence, productivity, and inclusion.

Jennifer's hope is that this Committee can meet as a group and pave the way for others who sit on the Council in the future.

e. EXECUTIVE

Leroy Shipp reported on the February 8, 2011 meeting including two action items for Council consideration as follows:

- i. The extension/expansion of Project Search. It was moved/seconded (Aguilar/Good) and carried to approve the extension of the project until September 30, 2011 and add \$37,000 to the contract.
- ii. Executive Director Evaluation Tool. It was moved/seconded (Good/Dove) and carried to approve the evaluation tool and process as presented.

8. LOOKING AT QUALITY IN SERVICES

The following people presented on the Quality Review Consolidation Plan:

- Barry Benda, Light House;
- Nancy Dow Moody, Golden Gate Regional Center;
- Ellen Goldblatt, Consultant;
- Eric Zigman, Zigma Consulting;
- Gabriel Rogin, Golden Gate Regional Center;
- Amy Sullivan, Kinetic Flow; and
- Jim Shorter, Executive Director, Golden Gate Regional Center;

This consolidation plan was brought about to help ensure that state funding resources are dedicated to providing services and eliminating duplicative services. The following unification of key quality assurance functions and simultaneous refocusing of the quality assurance system were presented:

- Place under the DDS jurisdiction for all licensing, certification, and quality assurance functions regarding the health, welfare, and safety of people with developmental disabilities. The quality assurance and improvement tasks would be held by DDS with some tasks delegated to regional centers.
- Expand the focus of quality standards to address individual outcomes for people served such as community inclusion, empowerment and choice, as well as health and safety.
- Shift the focus of quality to a service enhancement model that encourages and rewards service provider improvements.
- The Department of Social Services will maintain enforcement responsibilities including fingerprinting, processing, and legally representing the State of California in the most serious incidents.
- Begin building an integrated data system to effect continuous improvement and make quality data available to people with developmental disabilities and their families.

9. COUNCIL MEMBERS' REPORTS/COMMENTS

Max Duley reported that while attending the 2011 TED Conference in Long Beach he approached a freelance photographer who goes around the world and takes pictures of people's faces close up, eyes, profiles, etc. and pastes it on the side of the walls in the communities to personify the struggles people are living through.

Max would like to take this project into the developmental disabilities community. He reached out to the Council and asked for pictures of consumers (with their permission) that would be hung around the state capitol during the budget crisis starting perhaps in April. For more information people are encouraged to visit www.insideoutproject.net or email Max directly.

Bill Moore gave a brief update on programs and trainings that are ongoing with the Department of Rehabilitation (DR). DR in collaboration with the California Community Colleges is developing the college and

career program that provides prevocational and vocational training through the provision of on campus training programs for students with disabilities. These programs will result in workforce preparation and employment.

Bill reiterated to Council members that this is the first time that students with intellectual disabilities are eligible for federal financial aid.

The Youth Leadership Forum will be held on July 24 and 28, 2011, in Sacramento. This program is for 11th and 12th grade high school students with disabilities, including students with developmental/intellectual disabilities.

Bill also discussed the six Windmill trainings that DR has given. Windmill trainings have been updated to include modern exercises; one of which focuses on intellectual disabilities. He also stated that Windmill is an internationally recognized training program that removes attitudinal barriers that prevent people with disabilities from obtaining or advancing in employment.

Robin Hansen gave an update on the State Council funded parent module on teaching functional skills in English and Spanish. This module is now available on-line and has been distributed. So far the feedback has been great. Several universities have called requesting permission to use the material.

The UCEDD is having an open house the afternoon of April 2, 2011 in support of Autism Awareness month. Additionally, they will be having an art exhibit at Second Saturday in downtown Sacramento on April 9, 2011. The artwork is by people with developmental disabilities.

Robin also announced the appointment of the new Executive Director, Lynn Abudodo, at the M.I.N.D. Institute, who will join the M.I.N.D. Institute on August 1, 2011.

The UCEDD Summer Institute is August 5, 2011. Programs and save-the-dates will be coming out shortly.

Olivia Raynor reported that Tuesday, March 22, 2011, the M.I.N.D. will be hosting the first meeting on postsecondary education for people with developmental disabilities in Sacramento.

Shirley Dove – Tony Anderson, Executive Director of the ARC of California has been invited to speak on intellectual and developmental disabilities in Cuba.

10. **CHAIRPERSON REPORT**

Leroy Shipp reported on the outcome of the Washington D.C. trip and the issuance of Governor's Briefing Paper. Although the elected leaders were encouraging, they reminded us of the budget deficit, indicating we as state and federal governments are going to have to come together to come up with plans and that the newer members of the house need more education on this topic. There are approximately 85 new Republicans that do not have a clear understanding of what the developmental disabilities community is all about.

11. **EXECUTIVE DIRECTOR'S UPDATE**

Barbara Turner passed away March 9, 2011. There is a plan for services in June. Barbara was an icon in the developmental services system for many years. She was active in the parent movement at Sonoma Developmental Center.

Headquarters had an Area Board Executive Director meeting on January 20, 2011. The agenda included updating area board strategic planning to include into the SCDD plan and improving the reporting database.

Carol Risley continues to do work to prepare for the Self Advocacy Summit which Jennifer Walsh will also attend to represent the Council. They will be meeting with six other states in this region and with the ADD Commissioner later this week. Kecia Weller and Melody Goodman put together the PowerPoint presentation.

She also attended the California Collaborative with the SCAN Foundation to talk about the cross over issues.

Carol is finishing up a series of trainings for Alta California Regional Center for both the employees and providers around the individual program planning process.

Progress is being made between SCDD and People First of California in regard to concerns brought up in the February 8, 2011 Executive Committee meeting. Carol has had dialogue with Kecia Weller on ways to strengthen the organization.

Carol Risley, along with Mark Starford, will be presenting and attending the Pac-Rim Conference in Hawaii on April 15-21, 2011.

Carol met with the Governor's Office around staff appointments to the Council, appointments of members, and appointments of members to area boards.

Headquarters is going to be undergoing major renovations starting sometime in March. This may cause some temporary shifting for some employees.

Form 700s are due April 1, 2011. In response to concerns from Council members, staff has established a system for tracking the Form 700s which includes notification letters that have already been sent out providing the due date, etc. There is also an ethics training requirement around the Form 700. People have not had to do this before but will have to moving forward. This training is required every two years and is available on-line.

Reminder to Council members with regard to travel claims. Carol asked that everyone get the honorarium and travel expense forms to Robin Maitino in a timely fashion. In the past headquarters has received claims as far back as 18 months. This is no longer acceptable.

12. ADJOURNMENT

Meeting was adjourned at 4:05 p.m.

AGENDA ITEM DETAIL SHEET

ISSUE: California State Strategic Plan on developmental Disabilities

BACKGROUND: The federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act) requires, among other things, that State Councils on Developmental Disabilities (Council) develop and submit a state plan every five years. Councils are currently in the process of developing their next five year plan to be submitted in August 2011. Among other things, the plan is to specify 5-year goals for advocacy, capacity building and systemic change related to the areas of emphasis outlined in the DD Act.

ANALYSIS/DISCUSSION: In preparation for the development of the state 5-year plan, area boards developed local plans, outlining goals and objectives that reflect the needs and priorities in their community. That information, as well as the Council's own focus areas, was merged into statewide goals and strategies. These goals and strategies were returned to the community for review and comment at 12 hearings held throughout the state. They were also posted on the SCDD website. Comments were incorporated into a draft plan which was brought to the Strategic Plan Subcommittee for review and refinement. A working session was held (over the phone) with staff and the chair of the Strategic Plan subcommittee. The plan was then reformatted to fit a new format provided by the Administration on Developmental Disabilities (ADD).

This document is now ready for Council review and approval (with modifications, if any) to be posted for the required 45 day timeline before being submitted to the ADD

COUNCIL STRATEGIC PLAN OBJECTIVE: Improve the SCDD organization and operations to effectively support the SCDD Vision and Mission and work collaboratively with other pertinent state agencies.

PRIOR COUNCIL ACTIVITY: On July 1, 2006, the Council produced a Strategic Plan

RECOMMENDATION(S): Review proposed State Strategic Plan and approve with or without modifications

ATTACHMENT(S): Draft State Strategic Plan, copy of PowerPoint presentation, chart of Plan Goals by Area Board

PREPARED: Rocio Smith, May 2, 2011



2012-2016 State Plan

Introduction

State Councils on Developmental Disabilities are funded by the Administration on Developmental Disabilities (ADD) under federal law 42 USC 15021 SEC. 121 to “engage in advocacy, capacity building, and systemic change activities that contribute to a coordinated, consumer- and family-centered, consumer- and family-directed, comprehensive system of community services, individualized supports, and other forms of assistance that enable individuals with developmental disabilities to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life.”

State Councils on Developmental Disabilities (SCDD) develop 5 year State Plans which identify goals and objectives that fall under one or more federal areas of emphasis: quality assurance, education and early intervention, child care, health, employment, housing, transportation, recreation, and other services available or offered to individuals in a community, including formal and informal community supports that affect their quality of life.

California is the most diverse and populous state in the nation. The state encompasses vast rural and agricultural areas that are sparsely populated as well as densely populated metropolitan areas, including Los Angeles, with over 3 million residents. Culturally and ethnically, there is no majority group in the state but a great variety of cultures, ethnic and racial groups. Over 200 different languages are spoken in California, with large populations of households having limited English proficiency.

Because of the vast size, complexity, and diversity of the State of California, it is critical to engage local communities in the development and implementation of the State Plan. The California SCDD is unique in having a network of 13 regional offices, known as the Area Boards on Developmental Disabilities. The Council, in concert with its area boards, has engaged the

local communities in initiating planning for the 2011-2016 State Plan over the past year. This entailed a community-based public process that enabled the Council to develop local goals and objectives based on the State Plan requirements, essentially building the State Plan from the ground up. These local plans are the basis for the California State Plan which also incorporates statewide system change projects. By developing the State Plan in a locally responsive manner, the SCDD believes that its goals, objectives and priorities will more effectively reflect the cultural, ethnic and language diversity of communities at both a local and state level.

The Local Plans, goals and objectives for each local area board are an appendix to the State Plan and give details as to how statewide goals will be implemented in the local area based on local needs and resources.

2012-16 STATE GOALS

Goal #1

Individuals with developmental disabilities have the information, skills, opportunities and support to advocate for their rights and services and to achieve self determination, independence, productivity, integration and inclusion in all facets of community life.

Areas of Emphasis:

☒ Quality ☐ Education and Early Intervention
☐ Health ☐ Employment ☐ Housing ☐ Formal
and Informal community supports ☐ Cross
cutting

Objectives

1a) The Council will promote the stability and expansion of a statewide self-advocacy network through financial and in-kind support, which includes ensuring that local delegates are able to participate effectively in statewide meetings and events.



1b) The Council will strengthen existing self-advocacy groups and promote establishment of new groups at the local level. At least 5 new self-advocacy groups will

be developed in new geographic areas. The number of self-advocates who participate in self-advocacy efforts as a result of this support will increase by 150 statewide annually.



1c) The Council will help to educate self-advocates so they are better able to assert their human, service and civil rights, prevent abuse, neglect, sexual and financial exploitation and be better informed on issues that affect them. At least 1450 self-advocates will be reached annually.

1d) The Council will collaborate with, promote and support the efforts of cross-

disability and youth disability organizations to expand and strengthen their leadership network.

1e) Individuals with developmental disabilities are supported and trained to become effective trainers of other individuals with developmental disabilities who in turn, will assume leadership roles.

Goal #2:

Individuals with developmental disabilities and their families become aware of their rights and receive the supports and services they are entitled to by law across the lifespan, including early intervention, transition into school, education, transition to adult life, adult services and supports, and senior services and supports.

Areas of Emphasis:

☒Quality ☒Education and Early Intervention ☒Health ☒Employment ☐Housing ☒Formal and Informal community supports ☐Cross cutting



Objectives

2a) On an annual basis, the Council will provide advocacy regarding education, early intervention, regional center (community) services and other services and supports to at least 1,700 individuals and/or families, at least 100 of whom are non-English speaking or limited English proficiency.

2b) Individuals with developmental disabilities, their families and their support and/or professional staff will increase their knowledge and skills so as to effectively access needed educational and/or community-based services through at least 50 trainings, conferences, workshops, webinars, and/or resource materials developed by the Council on topics such as rights under IDEA, rights under California's Lanterman Act annually.



2c) The Council will participate in cross-training, outreach, resource fairs and other forms of collaboration with a minimum of 25 local schools, Special Education Local Plan Areas (SELPA), Community Advisory Committee (CAC)s, Family Resource Centers, provider organizations and others in order to improve outcomes for youth and adults with developmental disabilities

2d) The Council will collaborate with federal developmental disability partners and other key stakeholders to protect the rights of residents in Developmental Centers and other large facilities. The Council will be involved in the planning and implementation of any closure process of a Developmental Center.

Goal #3:

Individuals with developmental disabilities and their families express the degree to which they are satisfied with their services and the extent to which they feel their needs are being met.

Areas of Emphasis:

☒Quality ☐Education and Early Intervention ☐Health ☐Employment ☐Housing ☐Formal and Informal community supports ☐Cross cutting

Objectives

3a) The Council will implement the Quality Assurance Program, in accordance with the requirements of the Council's contract with the Department of Developmental Services and participate in analyses of its findings and implications for system improvement.

3b) On a statewide and local level, the Council will advocate and promote innovation in service delivery including but not limited to self determination.



Goal #4

Public safety agencies, other first responders and the justice system get information and assistance to be knowledgeable and aware of the needs of individuals with developmental disabilities so they can respond appropriately when individuals with developmental disabilities may have experienced abuse, neglect, sexual or financial exploitation or violation of legal or human rights.

Areas of Emphasis:

☒Quality ☐Education and Early Intervention ☐Health ☐Employment ☐Housing ☒Formal and Informal community supports ☐Cross cutting

Objectives

4a) The Council will maintain or develop collaborative relationships with local law enforcement agencies and others to improve the awareness and education of public safety personnel and the justice system on the unique needs and contributions of individuals with developmental disabilities.



Goal #5

Individuals with developmental disabilities and their families get the information to be prepared for emergencies.

Areas of Emphasis:

☒Quality ☐Education and Early Intervention ☐Health ☐Employment ☐Housing ☐Formal and Informal community supports ☐Cross cutting

Objectives

5a) At least 300 individuals and families will be prepared in case of an emergency through the efforts of the Council in collaboration with others.

Goal #6

Young adults with developmental disabilities and their families get the information and support to be prepared for and experience a successful transition to adult life.



Areas of Emphasis:

☒Quality ☒Education and Early Intervention ☐Health ☐Employment ☐Housing ☐Formal and Informal community supports ☐Cross cutting

Objectives

6a) Students with developmental disabilities and their families will receive information, advocacy and support during transition to adult life.

Goal #7

Children birth to 3 who are at risk of or have a developmental delay and their families receive the early intervention services they need to achieve their potential.

Areas of Emphasis:

☒Quality ☒Education and Early Intervention ☐Health
☐Employment ☐Housing ☐Formal and Informal community supports ☐Cross cutting

Objectives

7a) Parents of young children will learn to navigate the service system and understand their rights through trainings and materials presented by the Council.

7b) Families of young children who experience barriers to accessing early intervention services and child welfare workers, medical personnel and others who serve them will receive technical assistance, information and advocacy through the Council in partnership with Family Resource Centers and others.



Goal #8

The State of California will adopt an Employment First policy which reflects inclusive and gainful employment as the preferred outcome for working age individuals with developmental disabilities.

Areas of Emphasis:

☐Quality ☐Education and Early Intervention ☐Health ☒Employment ☐Housing ☐Formal and Informal community supports ☐Cross cutting

Objectives

8a) The State Council's Employment First Committee will continue to identify strategies and monitor progress towards implementation of the employment first policy

Goal #9

Working age adults with developmental disabilities have the necessary information, tools and supports to succeed in inclusive and gainful work opportunities



Areas of Emphasis:

- ☐ Quality ☐ Education and Early Intervention ☐ Health
- ☒ Employment ☐ Housing ☐ Formal and Informal community supports
- ☐ Cross cutting

Objectives

9a) The Council will collaborate locally with others to expand employment and self employment opportunities for

individuals with developmental disabilities.

9b) The Council collaborates with colleges, federal partners and others to develop and expand post-secondary educational (PSE) options, work training programs, national service, internships and other opportunities that lead to inclusive and gainful employment.

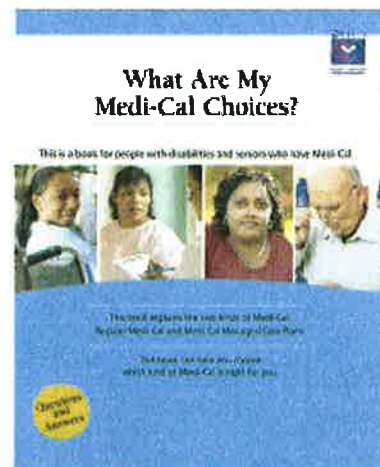
9c) Individuals with developmental disabilities, their families and others who support them are informed about the benefits and opportunities of employment through trainings, workshops and conferences.

Goal #10

Individuals with developmental disabilities understand their options regarding health services and have access to a full range of coordinated health, dental and mental health services in their community.

Areas of Emphasis:

- ☐ Quality ☐ Education and Early Intervention ☒ Health
- ☐ Employment ☐ Housing ☒ Formal and Informal community supports ☐ Cross cutting



Objectives

10a) Self-advocates, family members and advocates will receive information/training on Medi-Cal (Medicaid) managed care and the implementation of the 1115 waiver and other health related initiatives, including the availability of alternative sources for free or low cost health care services.

10b) The Council will monitor the transition to Medi-Cal (Medicaid) managed care at the county level, advocate and assist individuals in the process so as to ensure effective access to needed services.

Goal #11

Individuals with developmental disabilities have access to affordable and accessible housing that provides control, choice and flexibility regarding where and with whom they live.

Areas of Emphasis:

☐Quality ☐Education and Early Intervention ☐Health ☐Employment ☒Housing ☐Formal and Informal community supports ☐Cross cutting

Objectives:

11a) The Council will participate in regional centers' resource development and implementation of their Community Placement Plan to facilitate the movement of residents of developmental centers into community based living arrangements of their choosing

11b) Individuals with developmental disabilities and their families will receive information on available housing options

Goal #12

Affordable and accessible housing units are developed in local communities to expand housing options for individuals with developmental disabilities.

Areas of Emphasis:

☐Quality ☐Education and Early Intervention
☐Health ☐Employment ☒Housing ☐Formal and Informal community supports ☐Cross cutting

Objectives

12a) The Council will collaborate with local non-profit housing corporations to monitor and influence the housing plans of municipalities to



reflect the needs of individuals with developmental disabilities.

12b) The Council will identify and advocate for legislative and regulatory changes designed to increase the availability of affordable housing, including the opportunity for home ownership by individuals with developmental disabilities.

12c) The Council will publicize and advocate against incidents of “not in my back yard” (NIMBY). The Council will collaborate with federal partners, advocates, public interest law firms, and others to ensure that the media and government officials are aware of these incidents

Goal #13

Individuals with developmental disabilities and their families have access to community based services and supports available to the general population (such as recreation, transportation, childcare, etc.) that enable them to live productive and inclusive lives.

Areas of Emphasis:

☐Quality ☐Education and Early Intervention
☐Health ☐Employment ☐Housing ☒Formal and Informal community supports ☐Cross cutting

Objectives

13a) The Council will collaborate with local community agencies and organizations –including child care, recreation, transportation and others - to protect the rights of individuals with developmental disabilities and ensure their inclusion in the community.



Goal #14

Public policy in California promotes the independence, productivity, inclusion and self determination of individuals with developmental disabilities and their families

Areas of Emphasis:

☐Quality ☐Education and Early Intervention ☐Health ☐Employment ☐Housing ☐Formal and Informal community supports ☒Cross cutting



Objectives

14a) The Council will take a position on proposed state and federal legislation and proposed regulations that impact people with developmental disabilities, will communicate those positions to legislators and their staff, and will disseminate this information to all interested parties.

14b) Legislators and local officials will be educated and informed on issues that impact

the life of individuals with developmental disabilities. Legislative staff will be encouraged to utilize the expertise of the Council on issues that impact the community.

14c) The Council will use media, internet, arts and entertainment and social networking to educate the general public about individuals with developmental disabilities.



Goal #15

Individuals with developmental disabilities and their families have access to information and resources in ways that reflect their language and cultural preferences.

Areas of Emphasis:

☐ Quality ☐ Education and Early Intervention ☐ Health ☐ Employment ☐ Housing ☐ Formal and Informal community supports ☒ Cross cutting

Objectives

15a) Materials developed by the Council will be translated into threshold and plain languages.

State Plan Objectives

By Area Board

	AB1	AB2	AB3	AB4	AB5	AB6	AB7	AB8	AB9	AB10	AB11	AB12	AB13
Goal 1		X	X	X	X	X	X	X	X	X	X	X	X
Goal2	X	X	X	X	X	X	X	X	X	X	X	X	X
Goal 3	X	X	X	X	X	X	X	X	X	X	X	X	X
Goal 4		X	X		X				X		X		
Goal 5		X		X	X	X		X	X		X		
Goal 6		X			X	X		X	X	X		X	X
Goal 7			X		X		X		X				
Goal 8										X			
Goal 9	X	X	X	X	X				X	X	X	X	X
Goal 10	X	X			X	X	X			X	X		X
Goal 11		X	X		X	X	X			X	X	X	
Goal 12					X					X		X	
Goal 13					X	X			X	X	X	X	X
Goal 14	X	X	X	X	X	X	X	X	X	X	X	X	X
Goal 15					X		X	X	X	X	X		

This is a bird's eye view of the relationship between the State Plan and local Area Board plans. Please notice that this is not a precise description as many area board goals and strategies could fit under several State Plan goals

AGENDA ITEM DETAIL SHEET

ISSUE: Draft Employment First Report

BACKGROUND: Chapter 231, Statutes of 2009 (Assembly Bill 287) was signed into law on October 11, 2009 with the following legislative findings and declarations:

- “Working age people with disabilities are among the most unemployed and underemployed members of society;
- People with developmental disabilities are an important and largely untapped employment resource;
- Research demonstrates that wages and hours worked increase dramatically as individuals move from facility-based to integrated employment, and suggests that other benefits include expanded social relationships, heightened self-determination, and more typical job acquisition and job roles;
- Recent data indicate that, with 13 percent of working age individuals with developmental and intellectual disabilities in competitive or supported employment, California ranks 41st when compared with other states;
- Because the likelihood of individuals with developmental disabilities obtaining employment is greater if they move directly from school to work, education programs should prepare transition age students for employment in community settings;
- Increasing integrated and gainful employment opportunities for people with developmental disabilities requires collaboration and cooperation by state and local agencies, including, but not limited to, the State Department of Developmental Services and regional centers, the State Council on Developmental Disabilities, the Department of Rehabilitation, the State Department of Education and local school districts, and the Employment Development Department;
- The Legislature places a high priority on providing supported employment and other integrated employment opportunities for working-age adults with developmental disabilities; and
- In developing the individual program plan pursuant to Section 4646.5 of the Welfare and Institutions Code, planning teams are encouraged to discuss school-to-work opportunities during individual program plan meetings beginning when a consumer reaches 14 years of age, and regional center representatives are encouraged to inform the consumer, parent, legal guardian, or conservator that the

regional center is available, upon request, to participate in the consumer's individualized education plan meetings to discuss transition planning”.

Chapter 231 mandates the Council to:

- Form a standing Employment First Committee;
- Identify the respective roles and responsibilities of state and local agencies in enhancing integrated and gainful employment opportunities for people with developmental disabilities;
- Identify strategies, best practices, and incentives for increasing integrated employment and gainful employment opportunities for people with developmental disabilities, including, but not limited to, ways to improve the transition planning process for students 14 years of age or older, and to develop partnerships with, and increase participation by, public and private employers and job developers;
- Identify existing sources of employment data and recommending goals for, and approaches to measuring progress in, increasing integrated employment and gainful employment of people with developmental disabilities;
- Recommend legislative, regulatory, and policy changes for increasing the number of individuals with developmental disabilities in integrated employment, self-employment, and microenterprises, and who earn wages at or above minimum wage, including, but not limited to, recommendations for improving transition planning and services for students with developmental disabilities who are 14 years of age or older;
- Develop an Employment First Policy; and
- By July 1, 2011, and annually thereafter, provide a report to the appropriate policy committees of the Legislature and to the Governor describing its work and recommendations. The report due by July 1, 2011, shall include the proposed Employment First Policy

In response to this mandate, the Council appointed an Employment First Committee (EFC), as outlined in the statute, as well as a number of providers and others to serve in a consultative role with the EFC. The EFC and consultants formed five subcommittees to address barriers to employment, public benefits and employment, employer issues, innovative strategies, and transition from high school to adult life. The subcommittees were balanced to ensure each had representation of at least one EFC member, one individual with developmental disabilities, one provider of services, one family member, and staff from relevant state departments. Individuals with developmental disabilities were offered and provided facilitation to ensure their full and equal participation. Each subcommittee gathered information and developed proposed

strategies designed to enhance employment opportunities for individuals with developmental disabilities. Those strategies form much of the draft report.

ANALYSIS/DISCUSSION: It is important to understand, that with the passage of this legislation comes a long-term commitment for Council activities focused on employment issues, maintenance of a standing EFC, and annual reports.

This initial report contains an Employment First policy that asserts the right of individuals with developmental disabilities to work on an equal basis with others in integrated competitive employment. The policy states that integrated competitive employment will be valued as a priority for individuals with developmental disabilities as opposed to the current approach which offers little assistance or encouragement to individuals to approach this future.

The report is designed to:

- Describe the status of integrated competitive employment of individuals with developmental disabilities or lack thereof;
- Identify successful approaches to increase employment from throughout the nation;
- Identify a myriad of strategies that could be pursued to address barriers to and furthering employment opportunities and options;
- Establish a point from which to start collaborations with other agencies and organizations toward seeking priority attention to these issues; and
- Assert preferred forms of services, supports and opportunities for youth with developmental disabilities as they transition from school that are preferred to the current prevailing practice of transitioning from school to sheltered environments.

This proposed policy and report is not designed to address the existing system of services and supports, but more so to raise the expectations of the system to match the changing desires and choices of the individuals supported by the system. Equally important is that the proposed strategies are not contaminated by the current poor prospects for employment and reduced public funding in California. They are designed to be visionary, offering a direction that may well have to be chipped away at over time. It did not seem prudent for the Council to issue a report that only recognized what might be able to be done today within the existing system when the intent of the legislation is clearly to move California to a preferred future as envisioned by individuals with developmental disabilities and their families. And further, the report is not designed to dictate a preferred future for anyone nor assume everyone would move in this direction, but does recognize that employment is an equal opportunity choice and the system needs to assure its focus is on ensuring such choice is available. Finally, as the system of services and supports faces more and more diminishing resources, the ability for individuals served to become more self sustaining (taxpayers) will reduce the strain of such reductions.

COUNCIL STRATEGIC PLAN OBJECTIVE: Promote the full inclusion in all chosen aspects of community life for Californians with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: The Council was the sponsor of Assembly Bill 287 and formed and supported the EFC.

RECOMMENDATION(S): Review/modify and approve the draft Employment First Report. As the report will not be in final form, this action is focused on the proposed policy and strategies; other information will be finalized and the entire report will be presented to the Executive Committee in June 2011 for final approval and submittal to the Governor and Legislature.

ATTACHMENT(S): Draft Employment First Report (appendix to agenda packet)

PREPARED: Report- Chris Arroyo, May 12, 2011
Detail Sheet- Carol J. Risley, May 11, 2011

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 1375 – developmental services: autism spectrum disorders

SUMMARY: AB 1375 requires DDS to develop guidance to the regional centers to use evidence-based practices and direct the regional centers to fund therapies that are prescribed by the consumer's clinical practitioner that meet the definition of evidenced-based practices. This bill also indicates that it does not require a regional center to provide services not readily or cost-effectively available within the regional center's jurisdiction or geographic area of the consumer. Evidence-based practices are defined as "practices that rely on a decisionmaking [sic] process that meets and combines all of the following criteria: best research evidence, best clinical experience, consistency with patient, family, and consumer values and choices, and informed consent." Lastly, it should be noted that there are no provisions that identify that the use of evidence-based practices should be consistent with the IPP process.

BACKGROUND: There has been long and increasing criticism of some treatments, methods, outcomes (or lack thereof), and expenses requested by families and funded by regional centers for the treatment of individuals with autism disorders.

ANALYSIS/DISCUSSION: A troubling aspect of this bill is the requirement that regional centers are directed to fund evidenced-based practices as prescribed by the consumer's clinical practitioner without any relationship to that decision being made as part of the IPP process and, as part of that process, designed to achieve certain outcomes.

COUNCIL STRATEGIC PLAN OBJECTIVE: Shape public policy that positively impacts Californians with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: LPPC met on April 21, 2011 and adopted a recommendation for Council action.

RECOMMENDATION(S): Watch AB 1375 and raise the issue of the requirement to purchase services outside of the IPP process as being inconsistent with the overall scheme of the Lanterman Act. Although AB 1375 was amended after the LPPC's recommendation, its concerns continue to exist in the current version of the bill.

ATTACHMENT(S): AB 1375 as amended on May 2, 2011

PREPARED: Christofer Arroyo, May 9, 2011

AMENDED IN ASSEMBLY MAY 2, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1375

Introduced by Assembly Member Huber

February 18, 2011

An act to add Section 4643.4 to the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1375, as amended, Huber. Developmental services: autism spectrum disorders.

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities.

This bill would require the department to develop guidance for regional ~~certain~~ centers in regard to the treatment of autism spectrum disorders and ~~develop a list of evidence-based behavioral and developmental, relationship-based therapies to assist the regional centers in determining which therapies qualify as evidence-based practices.~~ The bill would also require the department to direct the regional centers to fund ~~evidence-based practices on the list, as well as other evidence-based~~ therapies prescribed by the consumer's clinical practitioner, so long as those therapies can be shown to meet the definition of an evidence-based practice.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The incidence of autism in California has risen dramatically
4 in recent years.

5 (b) Autism spectrum disorders (ASDs) encompass a wide variety
6 of related disorders from autism to Asperger's syndrome to
7 pervasive developmental disorder — not otherwise specified.

8 (c) No two children on the spectrum exhibit the same symptoms
9 and challenges.

10 (d) While, as of yet, there is no cure for autism, early
11 intervention has been shown to have a positive impact in nearly
12 all children on the spectrum; *by* improving function and reducing
13 the need for future services.

14 ~~(e) There is a wide variety of evidence-based treatments for~~
15 ~~ASDs available. These include behavioral interventions, including,~~
16 ~~but not limited to, applied behavioral analysis; developmental,~~
17 ~~relationship-based interventions, including, but not limited to,~~
18 ~~DIR/Floortime and Relationship Development Intervention (RDI);~~
19 ~~and other speech, occupational, and physical therapies.~~

20 ~~(f)~~

21 (e) Just as no two children on the spectrum exhibit the same
22 symptoms and challenges, children on the spectrum respond to
23 treatments differently. An effective intervention for one child may
24 not be effective in another.

25 ~~(g)~~

26 (f) For many children, studies have shown that a combination
27 of evidence-based intervention therapies tailored to the needs of
28 the child have shown the most promise in reducing the impact of
29 autism and allowing for the maximum development of a child's
30 potential.

31 ~~(h)~~

32 (g) Different regional centers offer consumers within their
33 geographic base a different set of autism therapies.

34 ~~(i)~~

35 (h) Often, the only means available to parents who wish to
36 provide their child with the most effective set of therapies tailored
37 to their child's specific individual needs is to relocate from the
38 jurisdiction of a regional center that does not offer the optimum

1 service or mix of services to the jurisdiction of another regional
2 center that does.

3 ~~(j)~~

4 (i) For most parents, this forced relocation is impractical or
5 impossible, resulting in the child being provided services that do
6 not meet his or her specific individual needs. This results in the
7 expenditure of state funds for ineffective treatments and a loss of
8 opportunity for the child's development.

9 ~~(k)~~

10 (j) There is a need for a broader offering of evidence-based
11 services in order to maximize the effectiveness of treatment for
12 each child on an individual basis at all regional centers.

13 ~~(l)~~

14 (k) Services funded through the ~~Lanterman—Act—and~~
15 *Developmental Disabilities Services Act and provided by* the
16 regional centers must be evidence-based practices in order to ensure
17 that state funds are expended on proven therapies.

18 ~~(m) As with autism, there are a wide variety of infant mental~~
19 ~~health treatments that fall into several broad categories, including~~
20 ~~behavioral and developmental and relationship-based therapies.~~
21 ~~Over the last 30 years, there has been a growing body of established~~
22 ~~knowledge, expertise, and competencies for the practice of infant~~
23 ~~mental health.~~

24 ~~(n) Infant mental health therapies are vital to preventing or~~
25 ~~reducing future mental health problems as the child ages.~~

26 ~~(o) Infant mental health diagnoses fall across a broad range of~~
27 ~~diagnoses. Often, there is a cooccurrence of both developmental~~
28 ~~delays and social-emotional delays, wherein a child can have more~~
29 ~~than one diagnosis across both the autism spectrum and mental~~
30 ~~health categories.~~

31 ~~(p) The appropriate evidence-based practice for infant mental~~
32 ~~health is determined by the child's diagnosis or diagnoses, specific~~
33 ~~individual needs, professional judgment, and the culture and values~~
34 ~~of the child's family.~~

35 ~~(q) Arbitrarily confining funding to a narrow set of approved~~
36 ~~therapies places the state in the role of medical practitioner.~~

37 ~~(r) When the state, acting as a de facto medical practitioner,~~
38 ~~prescribes therapies for a child by limiting the therapies available~~
39 ~~without an appropriate assessment of the child, the prescribed~~

therapies are likely to be inappropriate, wasteful of state resources, and potentially injurious to the mental health of the child.

(s) ~~State funding for infant mental health should be confined to evidence-based practices in accordance with infant mental health competencies established for this field.~~

(t) ~~Both autism and infant mental health are subject to conflicting and incomplete definitions of evidence-based practices in statute.~~

SEC. 2. Section 4643.4 is added to the Welfare and Institutions Code, to read:

4643.4. (a) The department shall do all of the following:

(1) Develop guidance for the regional centers that clarifies that each regional center should provide consumers with a wide variety of evidence-based ~~ASDs treatments~~ *treatments for ASDs* tailored to the individual needs of the consumer.

~~(2) Develop a list of evidence-based behavioral and developmental, relationship-based therapies to assist the regional centers in determining which therapies qualify as evidence-based practices.~~

~~(3)~~

(2) Direct the regional centers to fund ~~evidence-based practices on the list developed pursuant to paragraph (2), as well as other evidence-based~~ therapies prescribed by the consumer's clinical practitioner, so long as those therapies can be shown to meet the definition of an evidence-based practice.

~~(b) The department may consult with outside third parties, including, but not limited to, the University of California's University Centers for Excellence for Developmental Disabilities, to develop the list required in subdivision (a), as long as the criteria for selection of best practices conforms to the definition of evidence-based practices.~~

~~(c)~~

(b) Nothing in this section shall be construed as increasing the appropriations to the regional centers.

(c) Nothing in this section shall be construed as requiring a regional center to provide services not readily or cost-effectively available within the regional center's jurisdiction or the geographic area of the consumer.

(d) For purposes of this section, "evidence-based practices" means practices that rely on a decisionmaking process that meets and combines all of the following criteria:

- 1 (1) *Best research evidence.*
- 2 (2) *Best clinical experience.*
- 3 (3) *Consistency with patient, family, and consumer values and*
- 4 *choices, and informed consent.*

O

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 1205 – certified applied behavior analysis

BACKGROUND: Existing law creates and regulates the certification and licensure of various professions, such as therapists and social workers.

Applied behavior analysis (ABA) is a specific technique used to change behavior. During the past decade, there has been increasing evidence that ABA therapy is an important and valuable therapeutic intervention in the treatment of medical conditions such as autism and autism spectrum disorders (ASDs).

Presently, many families and people diagnosed with an autism spectrum disorder have difficulty obtaining ABA through their health insurance plans. Frequently, insurance companies cite, as the reason for denial, that ABA practitioners are not certified. This bill may be the first step to recognizing ABA and ABA practitioners as part of a certified profession (with a code of ethics, identified best practices, etc.) and thus may someday lead to greater ease in obtaining ABA from health insurers.

In September 2008, the California Department of Education proposed regulations which required ABA analysts and assistants to have at least 12 semester units in ABA training in order to provide ABA services to school-aged children. Significant opposition arose on the basis that the regulations unduly narrowed the definition of who could provide ABA services (thus limiting the availability of ABA services) and the regulations were not changed.

ANALYSIS/DISCUSSION: AB 1205 creates new two new professions – applied behavior analysts and assistant applied behavior analysts – and creates requirements that must be met to practice these professions.

As proposed in AB 1205, the requirements for a licensed applied behavior analyst license would be:

- possess a bachelor or master's degree in a relevant field as determined by the Board of Behavioral Sciences;
- complete at least 225 hours of classroom instruction;
- complete at least 1,500 hours of fieldwork under the supervision of a certified behavior analyst;
 - fieldwork activities include conducting assessments; designing, implementing, and monitoring behavior analysis programs; and overseeing behavior analysis programs implemented by others;
- complete at least 75 hours of direct supervisor contact; and,

- take and successfully pass an exam administered by the Behavior Analyst Certification Board (or another nonprofit approved by the Board of Behavioral Sciences).

As proposed in this bill, the requirements for a certified assistant applied behavior analyst license are:

- possess a bachelor or master's degree;
- complete at least 135 hours of classroom instruction;
- complete at least 1,000 hours of fieldwork under the supervision of a certified behavior analyst;
 - fieldwork activities include conducting assessments; designing, implementing, and monitoring behavior analysis programs; and overseeing behavior analysis programs implemented by unlicensed individuals who implement treatment plans and interventions designed and maintained by licensed behavior analysts;
- complete at least 50 hours of direct supervisor contact; and,
- take and successfully pass an exam administered by the Behavior Analyst Certification Board (or another nonprofit approved by the Board of Behavioral Sciences).

Under AB 1205 the services a licensed applied behavior analyst may perform include:

- design, implement, and evaluate systematic instructional and environmental modifications to produce socially significant improvements in human behavior of individuals or groups;
- apply principles, methods, and procedures of operant and responding learning;
- utilize contextual factors, establishing operations, antecedent stimuli, position reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions;
- assess functional relations between behavioral and environmental factors;
- apply interventions based on scientific research and the direct observation and measurement of behavior and environment;
- supervise unlicensed individuals who implement treatment plans and interventions designed and maintained by licensed behavior analysts and,
- the practice of applied behavior analysis excludes the practice of psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling.

A certified assistant applied behavior analyst may provide these services under the supervision of a certified applied behavior analyst.

In order to enable the Board of Behavioral Sciences to administer and enforce these provisions, further provisions are established in the bill, such as the ability of the Board to suspend licenses.

One critical issue related to AB 1205 is that it does not seem to address sufficient direct exposure to individuals with autism spectrum disorders.

COUNCIL STRATEGIC PLAN OBJECTIVE: Shape public policy that positively impacts Californians with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: LPPC review and action as recommended on April 21, 2011.

LPPC RECOMMENDATION(S): Oppose AB 1205 and provide recommend the bill get a dual referral to Assembly Human Services committee. LPPC's recommendations were made for a number of reasons including:

- the fact that it believed the licensure requirements do not contain sufficient experience working directly with individuals with autism spectrum disorders, and
- that the provisions would unduly narrow the definition of who may provide ABA services (and thus potentially limit the availability of services).

ATTACHMENT(S): AB 1205 and the Assembly Appropriations Committee and Committee on Business, Professions and Consumer Protection analyses.

PREPARED: Christofer Arroyo, May 9, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1205

Introduced by Assembly Member Bill Berryhill

February 18, 2011

~~An act to amend Sections 4990.02, 4990.12, 4990.18, 4990.30, and 4990.38~~ *An act to amend Section 4990.18 of, and to add Chapter 5.2 (commencing with Section 2529.7.1) to Division 2 of, the Business and Professions Code, relating to healing arts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1205, as amended, Bill Berryhill. ~~Certified applied~~ *Licensed* behavior analysts.

Existing law provides for the licensure and regulation of various healing arts professions and vocations, including, but not limited to, marriage and family therapists, licensed educational psychologists, social workers, and licensed professional clinical counselors by the Board of Behavioral Sciences.

This bill would, *commencing January 1, 2015*, prohibit a person from holding himself or herself out to be a ~~certified applied~~ behavior analyst or a ~~certified~~ *an assistant applied* behavior analyst unless licensed by the Board of Behavioral Sciences. The bill would require the board to issue a license to a person who meets certain educational requirements and passes an examination administered by *the board, the Behavior Analyst Certification Board, or another comparable accredited entity approved by the board, as specified*, and is certified by; the Behavior Analyst Certification Board, a nonprofit corporation, or another ~~similar comparable accredited entity approved by the board, as specified, and submits an application and pays fees established by the board. The bill~~

would specify that a license shall expire no later than 24 months after its date of issue, as specified, and is subject to renewal upon the completion of various requirements, including the payment of a renewal fee and the completion of continuing education hours. The bill would describe the services that may be provided by a ~~certified~~ ~~applied~~ licensed behavior analyst and a ~~certified~~ ~~licensed~~ assistant ~~applied~~ behavior analyst, subject to specified supervision. The bill would authorize the board to regulate these licensees and to enforce these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 5.2 (commencing with Section 2529.7.1) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 5.2. ~~CERTIFIED APPLIED~~ BEHAVIOR ANALYSTS

Article 1. General Provisions

2529.7.1. (a) The Board of Behavioral Sciences shall administer and enforce the provisions of this chapter. For the purposes of this chapter, it shall be designated as the board.

(b) Pursuant to Section 4990.20, the board may adopt regulations to carry out the provisions of this chapter.

Article 2. Licensure and Regulation

2529.7.2. No person shall hold himself or herself out to be a ~~certified~~ ~~applied~~ behavior analyst unless the person is licensed by the board pursuant to this chapter.

2529.7.3. (a) The board shall issue a ~~certified~~ ~~applied~~ behavior analyst license to an applicant who meets all of the following requirements:

(a) ~~An applicant for examination shall, at a minimum, meet the following requirements:~~

(1) ~~Possess~~ ~~Possesses~~ a baccalaureate and a master's degree that is relevant to the field of behavior analysis, as determined by the board, from any of the following:

1 (A) A United States or Canadian institution of higher education
2 fully or provisionally accredited by a regional, state, provincial,
3 or national accrediting body.

4 (B) An institution of higher education located outside the United
5 States or Canada that, at the time the applicant was enrolled and
6 at the time the applicant graduated, maintained a standard of
7 training equivalent to the standards of training of those institutions
8 accredited in the United States.

9 ~~(2) Complete 225 classroom hours of related graduate level~~
10 ~~instruction.~~

11 ~~(3) Complete 1,500 hours of supervised independent fieldwork~~
12 ~~under the supervision of a certified applied behavior analyst or~~
13 ~~initially, until January 1, 2013, under the supervision of a person~~
14 ~~who otherwise meets all of the requirements for certification.~~

15 ~~(A) An applicant must be supervised at least 75 hours.~~

16 ~~(2) Has completed no fewer than 225 classroom hours of related~~
17 ~~graduate level instruction.~~

18 ~~(3) Has completed no fewer than 1,500 hours of supervised~~
19 ~~independent fieldwork under the supervision of a licensed behavior~~
20 ~~analyst.~~

21 ~~(A) An applicant shall have a minimum of 75 hours of direct~~
22 ~~supervisor contact. For the purposes of this section, "direct~~
23 ~~supervisor contact" means in-person and on an individual basis.~~

24 (B) Appropriate supervised independent fieldwork activities
25 include all of the following:

26 (i) Conducting assessment activities related to the need for
27 behavioral interventions.

28 (ii) Designing, implementing, and monitoring behavior analysis
29 programs for clients.

30 (iii) Overseeing the implementation of behavior analysis
31 programs by others.

32 (iv) Other activities normally performed by a behavior analyst
33 that are directly related to behavior analysis, ~~such as, but not~~
34 ~~limited to, attending planning meetings regarding the behavior~~
35 ~~analysis program, researching the literature related to the program,~~
36 ~~and talking to individuals about the program.~~

37 ~~(b) An applicant for examination may, subject to approval by~~
38 ~~the board, take the examination if the applicant can demonstrate~~
39 ~~the equivalent completion of the requirements in subdivision (a).~~

1 ~~(e) Has successfully passed an examination administered by the~~
2 ~~Behavior Analyst Certification Board, a nonprofit corporation~~
3 ~~pursuant to Section 501(c)(3) of the Internal Revenue Code, or~~
4 ~~another similar entity approved by the board.~~

5 ~~(d) Is certified by the Behavior Analyst Certification Board, a~~
6 ~~nonprofit corporation pursuant to Section 501(c)(3) of the Internal~~
7 ~~Revenue Code, or another similar entity approved by the board.~~

8 *(4) Has successfully passed an examination administered by*
9 *the board, the Behavior Analyst Certification Board, or another*
10 *comparable entity approved by the board and accredited by the*
11 *National Commission for Certifying Agencies.*

12 *(5) Is certified by the Behavior Analyst Certification Board or*
13 *another comparable entity approved by the board and accredited*
14 *by the National Commission for Certifying Agencies.*

15 *(6) Pays fees described in Section 2529.7.7.*

16 *(b) None of the hours of experience described in subdivision*
17 *(a) may be accrued more than six years prior to the date the*
18 *application for licensure is filed.*

19 2529.7.4. No person shall hold himself or herself out to be a
20 ~~certified assistant~~ *applied an assistant* behavior analyst unless the
21 person is licensed by the board pursuant to this chapter.

22 2529.7.5. The board shall issue a ~~certified assistant~~ *applied an*
23 *assistant* behavior analyst license to an applicant who meets all of
24 the following requirements:

25 ~~(a) An applicant for examination shall, at a minimum, meet the~~
26 ~~following requirements:~~

27 ~~(1) Possess a baccalaureate and a master's degree from any of~~

28 ~~(a) Possesses at least a baccalaureate degree from any of the~~
29 ~~following:~~

30 ~~(A)~~

31 ~~(1) A United States or Canadian institution of higher education~~
32 ~~fully or provisionally accredited by a regional, state, provincial,~~
33 ~~or national accrediting body.~~

34 ~~(B)~~

35 ~~(2) An institution of higher education located outside the United~~
36 ~~States or Canada that, at the time the applicant was enrolled and~~
37 ~~at the time the applicant graduated, maintained a standard of~~
38 ~~training equivalent to the standards of training of those institutions~~
39 ~~accredited in the United States.~~

~~(2) Complete 135 classroom hours of related instruction through any of the following:~~

~~(b) Has completed no fewer than 135 classroom hours of related instruction as required by the board, the Behavior Analyst Certification Board, or another comparable entity approved by the board and accredited by the National Commission for Certifying Agencies through any of the following:~~

~~(A)~~

~~(1) College or university courses in behavior analysis, that are taken from an institution that meets either of the requirements described in paragraph (1) of subdivision (b) subdivision (a).~~

~~(B)~~

~~(2) Noncollege or university courses offered by an educational institution and approved for this purpose.~~

~~(C)~~

~~(3) A combination of college or university courses.~~

~~(3) Complete 1,000 hours of supervised independent fieldwork under the supervision of a certified applied behavior analyst or initially, until January 1, 2013, under the supervision of a person who otherwise meets all of the requirements for certification.~~

~~(A) An applicant must be supervised at least 50 hours.~~

~~(c) Has completed no fewer than 1,000 hours of supervised independent fieldwork under the supervision of a licensed behavior analyst.~~

~~(1) An applicant shall have a minimum of 50 hours direct supervisor contact.~~

~~(B)~~

~~(2) Appropriate supervised independent fieldwork activities include all of the following:~~

~~(i)~~

~~(A) Conducting assessment activities related to the need for behavioral interventions.~~

~~(ii)~~

~~(B) Designing, implementing, and monitoring behavior analysis programs for clients.~~

~~(iii)~~

~~(C) Overseeing the implementation of behavior analysis programs by others individuals described in paragraph (6) of subdivision (a) of Section 2529.7.6.~~

~~(iv)~~

1 (D) Other activities normally performed by a behavior analyst
2 that are directly related to behavior analysis, ~~such as, but not~~
3 ~~limited to, attending planning meetings regarding the behavior~~
4 ~~analysis program, researching the literature related to the program,~~
5 ~~and talking to individuals about the program.~~

6 ~~(b) An applicant for examination may, subject to approval by~~
7 ~~the board, take the examination if the applicant can demonstrate~~
8 ~~the equivalent completion of the requirements in subdivision (a).~~

9 ~~(c) Has successfully passed an examination administered by the~~
10 ~~Behavior Analyst Certification Board, a nonprofit corporation~~
11 ~~pursuant to Section 501(c)(3) of the Internal Revenue Code, or~~
12 ~~another similar entity approved by the board.~~

13 ~~(d) Is certified by the Behavior Analyst Certification Board, a~~
14 ~~nonprofit corporation pursuant to Section 501(c)(3) of the Internal~~
15 ~~Revenue Code, or another similar entity approved by the board.~~

16 *(d) Has successfully passed an examination administered by*
17 *the board, the Behavior Analyst Certification Board, or another*
18 *comparable entity approved by the board and accredited by the*
19 *National Commission for Certifying Agencies.*

20 *(e) Is certified by the Behavior Analyst Certification Board or*
21 *another comparable entity approved by the board and accredited*
22 *by the National Commission for Certifying Agencies.*

23 *(f) Pays fees described in Section 2529.7.7.*

24 2529.7.6. (a) ~~A certified applied licensed~~ behavior analyst
25 may provide all of the following services:

26 (1) Design, implement, and evaluate systematic instructional
27 and environmental modifications to produce socially significant
28 improvements in human behavior of individuals or groups.

29 (2) Apply principles, methods, and procedures of operant and
30 responding learning.

31 (3) Utilize contextual factors, establishing operations, antecedent
32 stimuli, position reinforcement, and other consequences to help
33 people develop new behaviors, increase or decrease existing
34 behaviors, and emit behaviors under specific environmental
35 conditions.

36 (4) Assess functional relations between behavioral and
37 environmental factors.

38 (5) Apply interventions based on scientific research and the
39 direct observation and measurement of behavior and environment.

1 (6) *Supervise unlicensed individuals who implement treatment*
2 *plans and interventions designed and maintained by the licensed*
3 *behavior analyst. This includes, but is not limited to, delivering*
4 *procedures and methods such as prompting, reinforcement,*
5 *shaping, fading, and differential reinforcement. The supervised*
6 *unlicensed individuals may also gather behavioral data that is*
7 *used to evaluate the effectiveness of the treatment plan.*

8 ~~(6)~~

9 (b) The practice of ~~applied~~ behavior analysis excludes the
10 practice of psychological testing, neuropsychology, psychotherapy,
11 cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and
12 long-term counseling.

13 ~~(b) A certified applied~~

14 (c) A licensed assistant behavior analyst may provide the
15 services in subdivision (a) under the supervision of a ~~certified~~
16 ~~applied~~ licensed behavior analyst.

17 2529.7.7. *The board shall establish application and license*
18 *fees in an amount sufficient to cover the reasonable regulatory*
19 *costs of carrying out the provisions of this chapter.*

20 2529.7.8. *The board shall not issue a license to a person who*
21 *has been convicted of a crime in this or any other state or in a*
22 *territory of the United States that involves sexual abuse of children*
23 *or who is required to register pursuant to Section 290 of the Penal*
24 *Code or the equivalent in another state or territory of the United*
25 *States.*

26 2529.7.9. *The board may refuse to issue a license to an*
27 *applicant if it appears he or she may be unable to practice safely*
28 *due to mental illness or chemical dependency. The procedures set*
29 *forth in Article 12.5 (commencing with Section 820) of Chapter 1*
30 *shall apply to a denial of a license pursuant to this section.*

31 2529.7.10. *The board may deny an application for licensure*
32 *or may suspend the license of a licensee if the applicant or licensee*
33 *is or has been guilty of unprofessional conduct, as described in*
34 *Section 4982.*

35 2529.7.11. *The board may place a license on probation.*

36 2529.7.12. *A license issued under this chapter shall expire no*
37 *later than 24 months after its date of issue. The expiration date of*
38 *the original license shall be set by the board.*

Article 3. License Renewal

2529.7.13. To renew an unexpired license, the licensee shall, on or before the expiration date of the license, take all of the following actions:

(a) Apply for renewal on a form prescribed by the board.

(b) Pay a renewal fee to be determined by the board by regulation. The renewal fee shall be in an amount sufficient to cover the reasonable regulatory costs of carrying out the renewal provisions of this chapter.

(c) Inform the board of whether he or she has been convicted, as defined in Section 490, of any misdemeanor or felony and whether any disciplinary action has been taken by a regulatory or licensing board in this or any other state after the prior issuance or renewal of his or her license.

(d) Maintain compliance with the requirements of Section 2529.7.3 if applying for renewal as a licensed behavior analyst and Section 2529.7.5 if applying for renewal as a licensed assistant behavior analyst.

(e) Complete the continuing education requirements described in Section 2529.7.17.

2529.7.14. A suspended license is subject to expiration as provided in Section 2529.7.12 and may be renewed as provided in this article.

2529.7.15. A revoked license is subject to expiration as provided in Section 2529.7.12, but it shall not be renewed.

2529.7.16. A license that is not renewed within three years after its date of expiration may not be renewed, restored, reinstated, or reissued; however, the licensee may apply for and obtain a new license if the following criteria are satisfied:

(a) No fact, circumstance, or condition exists that, if the license were issued, would constitute grounds for its revocation or suspension.

(b) He or she submits an application for examination eligibility and the fee for that application.

(c) He or she takes and passes the current licensing examination.

(d) He or she submits the fee for initial license issuance.

2529.7.17. (a) Except as provided in subdivision (c), the board shall not renew any license pursuant to this chapter unless the

1 licensee certifies to the board, on a form prescribed by the board,
2 that he or she has completed the following:

3 (1) For a licensed behavior analyst, no fewer than 36 hours of
4 continuing education.

5 (2) For a licensed assistant behavior analyst, no fewer than 24
6 hours of continuing education.

7 (b) The board shall have the right to audit the records of any
8 licensee to verify the completion of the applicable continuing
9 education requirement. Licensees shall maintain records of
10 completion of required continuing education coursework for a
11 minimum of two years and shall make these records available to
12 the board for auditing purposes upon request by the board.

13 (c) The board may establish exceptions from the continuing
14 education requirements for good cause, as defined by the board
15 by regulation.

16 (d) The continuing education shall be obtained from sources to
17 be determined by the board by regulation.

18
19 *Article 4. Miscellaneous*

20
21 2529.7.18. The board shall report each month to the Controller
22 the amount and source of all revenue received pursuant to this
23 chapter and at the same time pay the entire amount thereof into
24 the State Treasury for credit to the Behavioral Sciences Fund.

25 2529.7.19. Nothing in this chapter shall be construed to limit,
26 impair, or otherwise apply to the practice of any person licensed
27 and regulated under any other chapter of Division 2 (commencing
28 with Section 500).

29
30 *Article 5. Operation*

31
32 2529.7.25. This chapter shall become operative on January 1,
33 2015.

34 SEC. 2. ~~Section 4990.02 of the Business and Professions Code~~
35 ~~is amended to read:~~

36 ~~4990.02. "Board," as used in this chapter, Chapter 5.2~~
37 ~~(commencing with Section 2529.7.1), Chapter 13 (commencing~~
38 ~~with Section 4980), Chapter 13.5 (commencing with Section~~
39 ~~4989.10), Chapter 14 (commencing with Section 4991), and~~

Chapter 16 (commencing with Section 4999.10) means the Board of Behavioral Sciences.

~~SEC. 3. Section 4990.12 of the Business and Professions Code is amended to read:~~

~~4990.12. The duty of administering and enforcing this chapter, Chapter 5.2 (commencing with Section 2529.7.1), Chapter 13 (commencing with Section 4980), Chapter 13.5 (commencing with Section 4989.10), Chapter 14 (commencing with Section 4991), and Chapter 16 (commencing with Section 4999.10) is vested in the board and the executive officer subject to, and under the direction of, the board. In the performance of this duty, the board and the executive officer have all the powers and are subject to all the responsibilities vested in, and imposed upon, the head of a department by Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~SEC. 4.~~

~~SEC. 2. Section 4990.18 of the Business and Professions Code is amended to read:~~

~~4990.18. It is the intent of the Legislature that the board employ its resources for each and all of the following functions:~~

~~(a) The licensure of certified applied behavior analysts, certified assistant applied behavior analysts, marriage and family therapists, clinical social workers, professional clinical counselors, and educational psychologists.~~

~~(b) The development and administration of licensure examinations and examination procedures consistent with prevailing standards for the validation and use of licensing and certification tests. Examinations shall measure knowledge and abilities demonstrably important to the safe, effective practice of the profession.~~

~~(c) Enforcement of laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.~~

~~(d) Consumer education.~~

~~(e) Commencing January 1, 2015, the licensure of behavior analysts and assistant behavior analysts.~~

~~SEC. 5. Section 4990.30 of the Business and Professions Code is amended to read:~~

~~4990.30. (a) A licensed marriage and family therapist, marriage and family therapist intern, licensed clinical social worker, associate clinical social worker, licensed professional clinical~~

1 counselor, professional clinical counselor intern, licensed
2 educational psychologist, certified applied behavior analyst, or
3 certified assistant applied behavior analyst whose license or
4 registration has been revoked, suspended, or placed on probation,
5 may petition the board for reinstatement or modification of the
6 penalty, including modification or termination of probation. The
7 petition shall be on a form provided by the board and shall state
8 any facts and information as may be required by the board
9 including, but not limited to, proof of compliance with the terms
10 and conditions of the underlying disciplinary order. The petition
11 shall be verified by the petitioner who shall file an original and
12 sufficient copies of the petition, together with any supporting
13 documents, for the members of the board, the administrative law
14 judge, and the Attorney General.

15 (b) The licensee or registrant may file the petition on or after
16 the expiration of the following timeframes, each of which
17 commences on the effective date of the decision ordering the
18 disciplinary action or, if the order of the board, or any portion of
19 it, is stayed by the board itself or by the superior court, from the
20 date the disciplinary action is actually implemented in its entirety:

21 (1) Three years for reinstatement of a license or registration that
22 was revoked for unprofessional conduct, except that the board
23 may, in its sole discretion, specify in its revocation order that a
24 petition for reinstatement may be filed after two years.

25 (2) Two years for early termination of any probation period of
26 three years or more.

27 (3) One year for modification of a condition, reinstatement of
28 a license or registration revoked for mental or physical illness, or
29 termination of probation of less than three years.

30 (c) The petition may be heard by the board itself or the board
31 may assign the petition to an administrative law judge pursuant to
32 Section 11512 of the Government Code.

33 (d) The petitioner may request that the board schedule the
34 hearing on the petition for a board meeting at a specific city where
35 the board regularly meets.

36 (e) The petitioner and the Attorney General shall be given timely
37 notice by letter of the time and place of the hearing on the petition
38 and an opportunity to present both oral and documentary evidence
39 and argument to the board or the administrative law judge.

1 (f) The petitioner shall at all times have the burden of production
2 and proof to establish by clear and convincing evidence that he or
3 she is entitled to the relief sought in the petition.

4 (g) The board, when it is hearing the petition itself, or an
5 administrative law judge sitting for the board, may consider all
6 activities of the petitioner since the disciplinary action was taken,
7 the offense for which the petitioner was disciplined, the petitioner's
8 activities during the time his or her license or registration was in
9 good standing, and the petitioner's rehabilitative efforts, general
10 reputation for truth, and professional ability.

11 (h) The hearing may be continued from time to time as the board
12 or the administrative law judge deems appropriate but in no case
13 may the hearing on the petition be delayed more than 180 days
14 from its filing without the consent of the petitioner.

15 (i) The board itself, or the administrative law judge if one is
16 designated by the board, shall hear the petition and shall prepare
17 a written decision setting forth the reasons supporting the decision.
18 In a decision granting a petition reinstating a license or modifying
19 a penalty, the board itself, or the administrative law judge, may
20 impose any terms and conditions that the agency deems reasonably
21 appropriate, including those set forth in Sections 823 and 4990.40.
22 If a petition is heard by an administrative law judge sitting alone,
23 the administrative law judge shall prepare a proposed decision and
24 submit it to the board. The board may take action with respect to
25 the proposed decision and petition as it deems appropriate.

26 (j) The petitioner shall pay a fingerprinting fee and provide a
27 current set of his or her fingerprints to the board. The petitioner
28 shall execute a form authorizing release to the board or its designee,
29 of all information concerning the petitioner's current physical and
30 mental condition. Information provided to the board pursuant to
31 the release shall be confidential and shall not be subject to
32 discovery or subpoena in any other proceeding, and shall not be
33 admissible in any action, other than before the board, to determine
34 the petitioner's fitness to practice as required by Section 822.

35 (k) The board may delegate to its executive officer authority to
36 order investigation of the contents of the petition.

37 (l) No petition shall be considered while the petitioner is under
38 sentence for any criminal offense, including any period during
39 which the petitioner is on court-imposed probation or parole or
40 the petitioner is required to register pursuant to Section 290 of the

1 ~~Penal Code. No petition shall be considered while there is an~~
2 ~~accusation or petition to revoke probation pending against the~~
3 ~~petitioner.~~

4 ~~(m) Except in those cases where the petitioner has been~~
5 ~~disciplined for violation of Section 822, the board may in its~~
6 ~~discretion deny without hearing or argument any petition that is~~
7 ~~filed pursuant to this section within a period of two years from the~~
8 ~~effective date of a prior decision following a hearing under this~~
9 ~~section.~~

10 ~~SEC. 6. Section 4990.38 of the Business and Professions Code~~
11 ~~is amended to read:~~

12 ~~4990.38. The board may deny an application or may suspend~~
13 ~~or revoke a license or registration issued under the chapters it~~
14 ~~administers and enforces for any disciplinary action imposed by~~
15 ~~another state or territory or possession of the United States, or by~~
16 ~~a governmental agency on a license, certificate or registration to~~
17 ~~practice marriage and family therapy, clinical social work,~~
18 ~~educational psychology, professional clinical counseling, applied~~
19 ~~behavior analysis, or any other healing art. The disciplinary action,~~
20 ~~which may include denial of licensure or revocation or suspension~~
21 ~~of the license or imposition of restrictions on it, constitutes~~
22 ~~unprofessional conduct. A certified copy of the disciplinary action~~
23 ~~decision or judgment shall be conclusive evidence of that action.~~

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BILL ANALYSIS

AB 1205

Page 1

Date of Hearing: May 4, 2011

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Felipe Fuentes, Chair

AB 1205 (Bill Berryhill) - As Amended: April 4, 2011

Policy Committee: Business and
Professions Vote: 9-0Urgency: No State Mandated Local Program:
No Reimbursable: NoSUMMARY

This bill requires the Board of Behavioral Sciences (BBS) to license behavioral analysts (BA) and assistant BAs, on and after January 1, 2015. Standards for licensure include specified higher education and training, fieldwork, passage of relevant examinations, and national board accreditation. The bill also requires the licensure program to be supported through fees on licensees.

FISCAL EFFECT

- 1) Estimated first-year costs to the BBS of \$250,000 to establish the licensure program, and estimated annual ongoing costs of \$200,000, fully funded through fees on licensees. License fees would likely be between \$100 and \$200 per licensee.
- 2) There is potential for indirect cost impacts on health care service plans statewide. Costs could increase to the extent that licensure of BAs enhances the likelihood that ABA services are covered through managed care plans. Alternatively, if this bill reduces the number of providers who receive payment for ABA services because only a portion of the current provider community would qualify for licensure, costs may be reduced.

COMMENTS

- 1) Rationale . This bill intends to confer state licensure upon individuals that provide applied behavior analysis (ABA) services to individuals with medical conditions such as autism spectrum disorders (ASD) and other disorders that are

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responsive to ABA. According to the California Association of Behavioral Analysts, the sponsor of this bill, state licensure will increase the professional legitimacy of ABA services and will open the possibility of getting insurance companies to cover behavior analysis.

- 2) Applied Behavioral Analysis . Applied behavior analysis is the process of systematically applying interventions based upon

the principles of learning theory to improve socially significant behaviors to a meaningful degree, and to demonstrate that the interventions employed are responsible for the improvement in behavior. Socially significant behaviors include reading, academics, social skills, communication, and adaptive living skills like motor skills, eating and food preparation, personal self-care, domestic skills, home and community orientation, and work skills.

3) Coverage of ABA Services . ABA professionals indicate that ABA services have been proven effective at treating autism spectrum disorders. ABA requires intensive treatments of over 25 hours each week and cost around \$50,000 each year. There have been complaints related to the refusal of health care service plans to cover ABA services. In some cases, health plans have maintained that ABA services were not a covered benefit because they were provided by unlicensed individuals. Health plans have also contended that ABA services are educational in nature and not a matter of medical necessity. Some independent medical reviews of health plan coverage denials for ABA services for children diagnosed with autism overturned the health plan's decision to deny coverage.

The coverage of ABA has also been the subject of a recent lawsuit. The suit challenges a recent policy shift at the state Department of Managed Health Care (DMHC), clarified in a March 2009 memo issued by the department, that permits insurers to deny coverage for ABA. The DMHC memo indicated that plans must provide mental health services only through providers who are licensed and/or certified by the state. The suit alleged that DMHC had wrongfully allowed insurance companies to refuse to pay for autism treatments, resulting in the denial of critically needed, medically necessary treatment for autistic children. It further alleged that denial of coverage for ABA services is in violation of the California Mental Health Parity Act, which requires health plans to cover and pay for all medically necessary treatments for autism.

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The Los Angeles County Superior Court ruled in January 2011 that the DMHC violated the Administrative Procedure Act by issuing the memo instead of adopting such policy changes by regulation. However, the court did not address whether DMHC's permission for health plans to deny coverage was legal, or the impact of BA licensure. The plaintiffs are expected to appeal. Thus, at this time it is unknown what impact BA licensure will have on health care coverage of ABA services.

4) Concerns . Autism advocacy groups point out that the requirements for licensure in the bill, as currently drafted, exclude a number of highly qualified individuals who currently provide ABA services. If licensure indirectly shrinks the pool of available providers, there is concern that there may be difficulty accessing ABA services for the approximately 100,000 children with autism in the state.

5) Related Legislation . AB 171 (Beall) requires health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders. This bill is pending in the Assembly Appropriations Committee.

SB 1282 (Steinberg) in 2010 created a state certification program for applied behavior analysts. SB 1282 was significantly amended in the Assembly and never heard by a policy committee.

Analysis Prepared by : Lisa Murawski / APPR. / (916) 319-2081

BILL ANALYSIS

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Date of Hearing: April 12, 2011

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER
PROTECTION

Mary Hayashi, Chair

AB 1205 (Bill Berryhill) - As Amended: April 4, 2011

SUBJECT : Licensed behavior analysts.SUMMARY : Requires the Board of Behavioral Sciences (BBS) to license behavioral analysts (BA) and assistant BAs, on and after January 1, 2015. Specifically, this bill :

- 1) Requires BBS to administer and enforce the licensure of BAs and assistant BAs and authorizes BBS to adopt related regulations.
- 2) Prohibits a person from holding himself or herself out to be a BA or an assistant BA unless licensed by BBS pursuant to this bill.
- 3) Requires BBS to issue a BA license to an applicant who meets all of the following requirements:
 - a) Possesses a baccalaureate and a master's degree that is relevant to the field of behavior analysis, as determined by BBS, from any of the following:
 - i) A United States (U.S.) or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial, or national accrediting body; or,
 - ii) An institution of higher education located outside the U.S. or Canada that, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training equivalent to the standards of training of those institutions accredited in the U.S.
 - b) Has completed no fewer than 225 classroom hours of related graduate level instruction;
 - c) Has completed no fewer than 1,500 hours of supervised independent fieldwork under the supervision of a licensed

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BA, as specified;

- d) Has successfully passed an examination administered by BBS, the Behavior Analyst Certification Board (BACB), or another comparable entity approved by BBS and accredited by the National Commission for Certifying Agencies (NCCA);
- e) Is certified by BACB or another comparable entity

approved by BBS and accredited by NCCA; and,

f) Pays the prescribed fees.

4) Requires BBS to issue an assistant BA license to an applicant who meets all of the following requirements:

a) Possesses at least a baccalaureate degree from any of the following:

i) A U.S. or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial, or national accrediting body; or,

ii) An institution of higher education located outside the U.S. or Canada that, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training equivalent to the standards of training of those institutions accredited in the U.S.

b) Has completed no fewer than 135 classroom hours of related instruction as required by BBS, BACB, or another comparable entity approved by BBS and accredited by the NCCA, as specified;

c) Has completed no fewer than 1,000 hours of supervised independent fieldwork under the supervision of a licensed BA, as specified;

d) Has successfully passed an examination administered by BBS, BACB, or another comparable entity approved by BBS and accredited by NCCA;

e) Is certified by BACB or another comparable entity approved by BBS and accredited by the NCCA; and,

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f) Pays the prescribed fees.

5) Authorizes a licensed BA to provide all of the following services:

a) Design, implement, and evaluate systematic instructional and environmental modifications to produce socially significant improvements in human behavior of individuals or groups;

b) Apply principles, methods, and procedures of operant and responding learning;

c) Utilize contextual factors, establishing operations, antecedent stimuli, position reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions;

d) Assess functional relations between behavioral and environmental factors;

e) Apply interventions based on scientific research and the

direct observation and measurement of behavior and environment; and,

- f) Supervise unlicensed individuals who implement treatment plans and interventions designed and maintained by the licensed BA, including delivering procedures and methods such as prompting, reinforcement, shaping, fading, and differential reinforcement.
- 6) Excludes the practice of psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling under the practice of behavior analysis.
- 7) Authorizes a licensed assistant BA to provide the services outlined in 5) above, under the supervision of a licensed BA.
- 8) Requires BBS to establish application, licensure and renewal fees in an amount sufficient to cover the reasonable regulatory costs of carrying out the provisions of this bill.
- 9) Prohibits BBS from issuing a license to a person who has been

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convicted of a crime in California or any other state or territory of the U.S. that involves sexual abuse of children or who is required to register as a sex offender, as specified.

- 10) Authorizes BBS to refuse to issue a license to an applicant if it appears he or she may be unable to practice safely due to mental illness or chemical dependency, as specified.
- 11) Authorizes BBS to deny an application for licensure or suspend the license of a licensee if the applicant or licensee is or has been guilty of unprofessional conduct, as specified.
- 12) Authorizes BBS to place a license on probation.
- 13) Provides that a license issued under this bill shall expire no later than 24 months after its date of issue, as determined by BBS.
- 14) Requires a licensee, when renewing an unexpired license to:
 - a) Apply for renewal on a form prescribed by BBS.
 - b) Pay a renewal fee to be determined by BBS through regulation;
 - c) Inform BBS of whether he or she has been convicted of any misdemeanor or felony and whether any disciplinary action has been taken by a regulatory or licensing board in California or any other state after the prior issuance or renewal of his or her license;
 - d) Maintain compliance with the requirements for licensed BAs and licensed assistant BAs, as described above; and,
 - e) Complete continuing education requirements, as specified.
- 15) Provides that a suspended license is subject to expiration

and may be renewed as specified.

16) Provides that a revoked license is subject to expiration but may not be renewed.

17) Specifies that a license that is not renewed within three years after its date of expiration may not be renewed,

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restored, reinstated, or reissued; however, the licensee may apply for and obtain a new license if the following criteria are satisfied:

- a) No fact, circumstance, or condition exists that, if the license were issued, would constitute grounds for its revocation or suspension;
- b) He or she submits an application for examination eligibility and the fee for that application;
- c) He or she takes and passes the current licensing examination; and,
- d) He or she submits the fee for initial license issuance.

18) Prohibits BBS from renewing any license unless the licensee certifies to BBS, on a form prescribed by BBS, that he or she has completed the following:

- a) For a licensed BA, no fewer than 36 hours of continuing education (CE); and,
- b) For a licensed assistant BA, no fewer than 24 hours of CE.

19) Authorizes BBS to have the right to audit the records of any licensee to verify the completion of the applicable CE requirement, as specified.

20) Authorizes BBS to establish exceptions from the CE requirements for good cause, as defined by BBS through regulation.

21) Requires BBS to report each month to the Controller the amount and source of all revenue received pursuant to this bill and at the same time pay the entire amount thereof into the State Treasury for credit to the Behavioral Sciences Fund.

22) Provides that this bill does not limit, impair, or otherwise preclude persons acting within their scope of practice, as specified.

23) Commences the provisions of this bill on January 1, 2015.

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24) Defines "direct supervisor contact" to mean in-person and on an individual basis.

EXISTING LAW provides for the licensure and regulation of various healing arts professions and vocations, including, but not limited to, marriage and family therapists, licensed educational psychologists, social workers, and licensed professional clinical counselors by BBS.

FISCAL EFFECT : Unknown

COMMENTS :

Purpose of this bill . According to the author's office, "Currently, licensed professionals with behavior analysis in their scope of practice, such as psychiatrists, psychologists and clinical social workers, provide applied behavior analysis services. However, the vast majority of these services are provided by individuals certified as Board Certified BAs by the BACB, a nationally accredited organization. But, even with the BACB disciplinary procedures, these individuals are not regulated by any state licensing or credentialing authority, which leaves California consumers without state sanctioned protection or recourse when there is any concern associated with the services provided by these unlicensed individuals."

Background . The field of behavior analysis grew out of the scientific study of principles of learning and behavior. It has two main branches: experimental and applied behavior analysis. Applied behavior analysis professionals engage in the specific and comprehensive use of principles of learning, including operant and respondent learning, in order to address behavioral needs of widely varying individuals in diverse settings. Examples of these applications include: building the skills and achievements of children in school settings; enhancing the development, abilities, and choices of children and adults with different kinds of disabilities; and augmenting the performance and satisfaction of employees in organizations and businesses.

Support . The California Association for Behavior Analysts, the sponsor of this bill, writes in support, "Behavior analysis services are used to treat people with disabilities, most notably autism spectrum disorders. While psychologists, psychiatrists, and clinical social workers provide behavior analysis services, the vast majority of the services are

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provided by BAs and assistant BAs who are certified by the national BACB. Though accredited and certified, these professionals are not licensed or regulated by the state.

"AB 1205's licensure requirements would provide both the state and consumers recourse when there are any concerns with the services provided to children by BAs and assistant BAs. At the same time, the bill would not preclude other licensed professionals from providing behavior analysis services, if such services are within their scope of practice."

Opposition . The California Association of Marriage and Family

Therapists (CAMFT) writes in opposition, "Currently, BBS does not have the staffing resources to administer and regulate the professions it already regulates. By way of example, consider this posting on the BBS website as it relates to Marriage and Family Therapists: 'Due to hiring constraints, the Board is unable to fill vacancies, including those occurring in the application evaluation and renewal processing units? Simply put, BBS cannot assume additional responsibilities to regulate another profession unless it is provided the necessary staffing to do so?.'" "

Related legislation . AB 171 (Beall) of 2011, requires health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders. This bill is pending in the Assembly Health Committee.

REGISTERED SUPPORT / OPPOSITION :

Support

California Association for Behavior Analysts (sponsor)
Numerous individuals

Opposition

California Association of Marriage and Family Therapists
California Psychological Association

Analysis Prepared by : Rebecca May / B.,P. & C.P. / (916)
319-3301

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COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 862

BILL SUMMARY: This bill would allow additional regional center information to the public. It has passed in the Human Services Committee and at the time of printing, it is in the Appropriations Committee.

BACKGROUND: The California Public Records Act (PRA) currently requires that all state agencies release information requested by the public unless the information is exempt from disclosure for very specific reasons; however, since the regional centers are not state agencies, they do not have to provide information to the public upon their request.

This bill original proposed adding a new section to the Welfare and Institutions Code that would enact Regional Center Records Act; however, it was amended significantly and now lists various pieces of information that would be publicly disclosed.

ANALYSIS/DISCUSSION: All state agencies must provide information to the public upon their request pursuant to the Public Records Act; this process allows for individuals to receive information about public budget, expenditures, actions, plans and policies of state agencies. This exchange of information allows for transparency in the use of public dollars.

There is a major difference in the PRA and the proposed bill since the PRA requires the release of all state information UNLESS there is a qualified exception that protects the information from disclosure. This process allows the maximum transparency without releasing confidential information. This bill, as amended, proposes to release only specific information, thereby limiting information requests.

COUNCIL STRATEGIC PLAN OBJECTIVE: Shape public policy that positively impacts Californians with developmental disabilities and their families.

PRIOR COMMITTEE ACTIVITY: The Legislative and Public Policy Committee took action to recommend the Council support this bill if amended.

LPPC RECOMMENDATION(S): Support AB 862 if amended to establish the Regional Center Records Act as originally intended

ATTACHMENT(S): AB 862 and Assembly Committee on Human Services analysis.

PREPARED: Melissa C. Corral, April 29, 2011

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 862

**Introduced by Assembly Members Silva and Jeffries
(Principal coauthor: Assembly Member Logue)
(Coauthor: Assembly Member Allen)
(Coauthor: Senator Emmerson)**

February 17, 2011

An act to ~~add Chapter 15 (commencing with Section 4870) to Division 4.5~~ amend Section 4629.5 of the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

AB 862, as amended, Silva. Developmental services: ~~Regional Center Records Act.~~ *regional centers.*

Under existing law, the Lanterman Developmental Disabilities Services Act, the State Department of Developmental Services is authorized to contract with regional centers to provide support and services to individuals with developmental disabilities. *Existing law requires a regional center to include specified information on its Internet Web site for the purpose of promoting transparency and access to public information that includes specified information.*

This bill would add prescribed information to this requirement.

~~The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure.~~

~~This bill would enact the Regional Center Records Act. The act would require regional centers to disclose specified information to the public,~~

subject to certain provisions. The bill would also require the department to consult with the regional centers to develop policies and procedures to implement the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4629.5 of the Welfare and Institutions
2 Code is amended to read:

3 4629.5. (a) In addition to the requirements set forth in Section
4 4629, the department's contract with a regional center shall require
5 the regional center to adopt, maintain, and post on its Internet Web
6 site a board-approved policy regarding transparency and access to
7 public information. The transparency and public information policy
8 shall provide for timely public access to information, including,
9 but not limited to, information regarding requests for proposals
10 and contract awards, service provider rates, documentation related
11 to establishment of negotiated rates, audits, and IRS Form 990.
12 The transparency and public information policy shall be in
13 compliance with applicable law relating to the confidentiality of
14 consumer service information and records, including, but not
15 limited to, Section 4514.

16 (b) To promote transparency, each regional center shall include
17 on its Internet Web site, as expeditiously as possible, at least all
18 of the following:

- 19 (1) Regional center annual independent audits.
- 20 (2) Biannual fiscal audits conducted by the department.
- 21 (3) Regional center annual reports pursuant to Section 4639.5.
- 22 (4) Contract awards, including the organization or entity
- 23 awarded the contract, and the amount and purpose of the award.
- 24 (5) *The actual rates paid to each vendor.*
- 25 (6) *Any public funds provided to a nonprofit housing*
- 26 *organization outside the request for proposals process.*

27 ~~(5)~~

28 (7) Purchase of service policies.

29 ~~(6)~~

30 (8) The names, types of service, *principals*, and contact
31 information of all vendors, except consumers or family members
32 of consumers.

~~(7)~~

(9) Board meeting agendas and approved minutes of open meetings of the board and all committees of the board.

~~(8)~~

(10) Bylaws of the regional center governing board.

~~(9)~~

(11) The annual performance contract and year-end performance contract entered into with the department pursuant to this division.

~~(10)~~

(12) The biannual Home and Community-based Services Waiver program review conducted by the department and the State Department of Health Care Services.

~~(11)~~

(13) The board-approved transparency and public information policy.

~~(12)~~

(14) The board-approved conflict-of-interest policy.

(15) *Conflict of interest disclosures.*

~~(13)~~

(16) Reports required pursuant to Section 4639.5.

(17) *Any legal settlements that can be disclosed.*

(c) The department shall establish and maintain a transparency portal on its Internet Web site that allows consumers, families, advocates, and others to access provider and regional center information. Posted information on the department's Internet Web site transparency portal shall include, but need not be limited to, all of the following:

(1) A link to each regional center's Internet Web site information referenced in subdivision (b).

(2) Biannual fiscal audits conducted by the department.

(3) Vendor audits.

(4) Biannual Home and Community-based Services Waiver program reviews conducted by the department and the State Department of Health Care Services.

(5) Biannual targeted case management program and federal nursing home reform program reviews conducted by the department.

(6) Early Start Program reviews conducted by the department.

(7) Annual performance contract and year-end performance contract reports.

1 ~~SECTION 1. Chapter 15 (commencing with Section 4870) is~~
2 ~~added to Division 4.5 of the Welfare and Institutions Code, to read:~~

3
4 ~~CHAPTER 15. REGIONAL CENTER RECORDS~~

5
6 ~~4870. This chapter shall be known, and may be cited as, the~~
7 ~~Regional Center Records Act.~~

8 ~~4871. For purposes of this chapter, the following definitions~~
9 ~~shall apply:~~

10 ~~(a) "Department" shall mean the State Department of~~
11 ~~Developmental Services.~~

12 ~~(b) "Vendor" shall mean an individual or entity approved to~~
13 ~~provide services and supports to consumers pursuant to Section~~
14 ~~4648.~~

15 ~~4872. A regional center shall, upon request from a member of~~
16 ~~the public, make available in a reasonable and timely manner, the~~
17 ~~following information:~~

18 ~~(a) The company name and principals of any entity established~~
19 ~~as a vendor with the regional center.~~

20 ~~(b) Vendor program designs.~~

21 ~~(c) Actual rates per service codes.~~

22 ~~(d) Actual rates paid to all vendors.~~

23 ~~(e) Actual rates paid per vendor code.~~

24 ~~(f) Actual rate formulas.~~

25 ~~(g) Actual vendor referral rates.~~

26 ~~(h) Vendor reviews, audits, or quality assurance reports.~~

27 ~~(i) Contracts entered into with any vendor.~~

28 ~~(j) The number of consumers that qualify for a developmental~~
29 ~~disability waiver.~~

30 ~~(k) Data regarding actual administrative expenditures to include~~
31 ~~travel, salaries, and pension costs.~~

32 ~~(l) Data regarding contracts for services to the regional center,~~
33 ~~including, but not limited to, leases, vehicles, legal services,~~
34 ~~consulting, and any other goods or services.~~

35 ~~(m) Any legal settlements that can be disclosed.~~

36 ~~(n) Conflict of interest disclosures.~~

37 ~~(o) Any public moneys used for or by a nonprofit housing~~
38 ~~organization.~~

39 ~~(p) Audits of the regional center.~~

1 ~~4873.— A regional center may charge a fee to cover the actual~~
2 ~~costs of reproduction of files commensurate with the fee schedule~~
3 ~~in the California Public Records Act (Chapter 3.5 (commencing~~
4 ~~with Section 6250) of Division 7 of Title 1 of the Government~~
5 ~~Code).~~

6 ~~4874.— The department shall consult with the regional centers~~
7 ~~to develop policies and procedures to implement this chapter.~~

8 ~~4875.— Nothing in this chapter shall be construed to limit or~~
9 ~~change the privacy protections afforded by any other provision of~~
10 ~~law.~~

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BILL ANALYSIS

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Date of Hearing: April 5, 2011

ASSEMBLY COMMITTEE ON HUMAN SERVICES

Jim Beall Jr., Chair

AB 862 (Silva and Jeffries) - As Introduced: February 17, 2011

SUBJECT : Developmental services: Regional Center Records Act

SUMMARY : Enacts the Regional Center Records Act (RCRA), requiring regional centers (RCs) to disclose specified information to the public upon request. Specifically, this bill :

- 1) Requires that a RC, upon request from a member of the public, make available the following information in a reasonable and timely manner:
- a) The company name and principals of any vendor of the RC;
 - b) Vendor program designs;
 - c) Actual rates per service code;
 - d) Actual rates paid to all vendors;
 - e) Actual rates paid per vendor code;
 - f) Actual rate formulas;
 - g) Actual vendor referral rates;
 - h) Vendor reviews, audits, or quality assurance reports;
 - i) Contracts entered into with any vendor;
 - j) The number of consumers that qualify for a developmental disability waiver;
 - aa) Data regarding actual administrative expenditures to include travel, salaries, and pension costs;
 - bb) Data regarding contracts for services to the regional center, including, but not limited to, leases, vehicles, legal services, consulting, and any other goods or services;

□

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- cc) Any legal settlements that can be disclosed;
 - dd) Conflict of interest disclosures;
 - ee) Any public moneys used for or by a nonprofit housing organization; and,
 - ff) Audits of the RC.
- 2) Defines "vendor" to mean an individual or entity approved to provide services and supports to consumers pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), and defines "department" to mean the Department of Developmental Services (DDS).
- 3) Authorizes an RC to charge a fee to cover the actual costs of reproducing documents commensurate with the fee schedule in the California Public Records Act.

- 4) Requires DDS to consult with RCs to develop policies and procedures to implement the provisions of the RCRA.
- 5) Provides that nothing in the RCRA shall be construed to limit or change privacy protections afforded under any other provision of law.

EXISTING LAW

- 1) Establishes the Lanterman Developmental Disabilities Services Act (Lanterman Act), under which DDS contracts with 21 private non-profit RCs to provide case management services and arrange for, or purchase, services that meet the needs of individuals with developmental disabilities.
- 2) Establishes the California Public Records Act (CPRA) and requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are otherwise exempt from disclosure by a state or federal law.
- 3) Provides in the Lanterman Act (at Welfare & Institutions Code Section 4514) that, except for specifically delineated exceptions, all information and records obtained in the course of providing services to people with developmental

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disabilities shall be confidential.

FISCAL EFFECT : Unknown

COMMENTS : The Lanterman Act establishes a comprehensive statutory scheme to provide services and supports to people with developmental disabilities. Direct responsibility for implementation of the Lanterman Act service system is allocated between DDS and 21 RCs. RCs are private nonprofit entities established pursuant to the Lanterman Act that contract with DDS to carry out many of the state's responsibilities under the Act, including intake and assessment, case management, and individual program plan (IPP) development and implementation.

The RC budget for 2010-11 is approximately \$4.1 billion in state and federal funds to serve 244,000 people with developmental disabilities (consumers) by securing or purchasing services based on each consumer's individual needs and choices as determined through the IPP process. Approximately 40,000 vendored service providers deliver a wide range of services to consumers, such as respite care, transportation, day treatment programs, residential placements, supported living services, work support programs, and various social and therapeutic activities.

Although RCs receive substantial public funds to carry out the state's responsibilities under the Lanterman Act, they are not state or local agencies within the meaning of the CPRA and, therefore, are not subject to its records disclosure requirements. A prior bill, introduced in the 2009-10 Session, AB 2220 (Silva), would have designated RCs as local agencies under the CPRA. AB 2220 was held on the Assembly Appropriations Committee Suspense File. Policy concerns were also raised with AB 2220 with respect to whether it would withstand legal challenges, and with the precedent it would establish in potentially subjecting other nonprofits to the disclosure requirements of the CPRA.

Need for this bill : According to the authors, this bill seeks to require more transparency of the 21 RCs. The authors note that:

Recent reports by both investigative journalists and the California State Auditors reveal that operations and expenditures at some of the [RCs] could be more cost

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effective. Currently, the YRCs] use their non-profit status to deny requestors information that would typically be covered under the YCPRA]. It is reasonable to expect YRCs] to share information with the public when they receive all funding from the State of California. Additionally, parents, vendors, staff and people with disabilities could all benefit from a more uniform and transparent process. YThis bill] will require the YRCs], private non-profit community agencies that utilize public funds to provide state mandated services to persons with disabilities, to disclose specific and narrow information under a new act, the Regional Center Records Act.

BSA Audit : The California State Auditor, Bureau of State Audits (BSA), recently issued a report of its review of RC procurement and rate-setting processes. Department of Developmental Services: A more uniform and transparent rate-setting process would improve the cost-effectiveness of regional centers, Report 2009-118, August 2010 (BSA Report). The BSA visited a sample of 6 RCs. For those RCs, the Joint Legislative Audit Committee directed the BSA to review procedures for allowing public access to information on operations and to determine if requests for public records made by service providers in the past two fiscal years were satisfied in a timely manner and within the requirements of the law. The BSA determined "that the information that regional centers are required to make public is limited to employment contracts and that the regional centers are not required to maintain, and do not maintain, logs of public information requests or track how such requests are fulfilled. As such, we could not perform tests of public or service provider requests for information."

The BSA Report noted the lack of formal and transparent rate-setting and vendor-selection processes by the RCs included in the audit. BSA Report, p. 2. It was noted that the lack of transparency to outside reviewers results in the potential for favoritism and makes it impossible to determine whether RCs are properly taking cost into consideration in selecting among comparable vendors. BSA Report, p. 46.

Budget Trailer Bill : The Governor's Budget for 2011-12 proposed increases in accountability and transparency in the RC system. To promote transparency, the recently chaptered 2011-12 Budget Trailer Bill pertaining to DDS, SB 74 (Committee on Budget & Fiscal Review), Chapter 9, Statutes of 2011, requires each RC to

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adopt, maintain, and post on its Internet Web site a board-approved policy regarding transparency and access to public information. The policy must provide for timely public access to information, including information regarding requests for proposals and contract awards, service provider rates, documentation related to establishment of negotiated rates, audits, and IRS Form 990. Under SB 74, each RC would be required to post at least the following:

- RC annual independent audits;
- Biannual fiscal audits conducted by DDS;
- RC annual reports;
- Contract awards, including the organization or entity awarded the contract, and the amount and purpose of the award;
- Purchase of service policies;
- The names, types of service, and contact information of all vendors, except consumers or family members of consumers;
- Board meeting agendas and approved minutes of open meetings of

the board and all committees of the board;
 Bylaws of the RC governing board;
 The annual performance contract and year-end performance
 contract entered into with DDS;
 The biannual Home and Community-based Services (HCBS) Waiver
 program review conducted by DDS and the Department of Health
 Care Services (DHCS);
 The board-approved transparency and public information policy;

The board-approved conflict-of-interest policy; and,
 The annual reports of salary schedules by personnel
 classification, and operations budget expenditures for
 administrative services.

In addition, SB 74 requires that DDS establish a transparency
 portal on its Web site, which is to include, but need not be
 limited to, all of the following:

Links to the above RC web sites;
 Biannual fiscal audits conducted by DDS;
 Vendor audits;
 Biannual HCBS Waiver program reviews conducted by DHCS;
 Early Start Program reviews conducted by DDS; and,
 Annual performance contract and year-end performance contract
 reports.

While there is overlap between the disclosures required by this

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bill and the information required to be posted on the Internet
 by SB 74 (e.g., RC audits, vendor audits), the lists are largely
 distinct. A primary difference is in the means by which
 information is required to be made available. This bill
 requires that individuals submit requests for information, which
 RCs must respond to on a case-by-case basis. While much of the
 information required by SB 74 may be already available to the
 public upon request, SB 74 requires that the information be
 posted on RCs' or DDS' websites, making it immediately available
 to anyone with access to a computer. Under this bill, on the
 other hand, information must be paid for by each individual
 requesting it and would require RC staff resources to respond to
 each request. Under SB 74, information would be available
 without cost to the person seeking to access it and would
 require no staff time once it is posted.

The Association of Regional Center Agencies (ARCA) opposes this
 bill and points out that "Due to budget reductions and other
 cost-savings measures, [RC] staff are currently operating under
 heavy workloads. They are not staffed to respond to records
 requests without compromising or redirecting staff that could or
 would otherwise be serving the people we are mandated by law to
 serve. Our primary mission is to serve people with
 developmental disabilities and their families, not to divert
 scarce resources in providing information that could be accessed
 through alternative means."

The fiscal impact of this bill is within the jurisdiction of the
 Appropriations Committees; however, the staff resource issue
 raised by ARCA does have implications for the provision of
 services to consumers and family members. Without additional
 staff resources, time spent responding to individual records
 requests is time not spent on activities that may directly or
 indirectly impact the delivery of services. This bill
 authorizes an RC to charge a fee to cover the actual costs of
 reproducing documents commensurate with the fee schedule in the
 CPRA. The CPRA, however, limits costs to statutory fees
 established by the Legislature or the "direct cost of
 duplication," usually 10 to 25 cents per page. Under the CPRA
 this cannot include charges for search, review or deletion;
 although, programming costs to extract electronic data can be
 included under the CPRA. The CPRA also does not require an
 agency to create a record, list, or compilation that does not
 already exist. It is not clear if some of the items subject to
 disclosure under this bill (e.g., actual rates paid to all

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vendors) would require the creation of lists or compilations that do not otherwise exist, which, of course, would require additional staff resources.

Under the CPRA, records are broadly defined to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristic." Government Code Section 6252(e). The CPRA further provides for various exemptions. The RCRA established by this bill, on the other hand, does not provide broad access to RC records with delineated exemptions. It is, instead, a selective list of specified information and documents that RCs are to provide upon request. The list is limited and arbitrary. For example, much of the information that would be available to the public on the Internet under SB 74 is not included in the information required to be produced under this bill.

If construed as an RC counterpart to the CPRA, this bill could arguably limit access to myriad types of RC records and, thus, hinder the transparency that this bill is intended to promote. A principle of statutory construction is that when one or more things of a class are expressly mentioned others of the same class are excluded: *Expressio unius est exclusio alterius*. By enacting RC records access requirements specifying a finite list of documents to which members of the public are to have access, the RCRA could be interpreted to preclude access to other RC records, not included in the list. Making the list more open-ended, on the other hand, would require, as in the CPRA, specification of those records that are exempt from disclosure, such as employee personnel records, confidential consumer information, etc. It would also require far more staff resources to respond to records requests.

Alternative approaches : Following are two alternative approaches to increasing transparency in the RC system that may be more practical and cost-effective:

- 1) As noted, SB 74, the DDS Trailer Bill, takes a different approach by requiring specified information to be posted on each RC's Web site. This has the advantages of making information available to the entire public, not just the individual requesting it, and of avoiding the staff time required to respond to multiple, duplicative requests.

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- 2) Another alternative, which could be considered in place of or in combination with the first suggested alternative, would be to require RCs to report additional information to DDS that should be available to the public. At that point, the information would become public records subject to disclosure by DDS under the CPRA.

PROPOSED AMENDMENTS

The authors are reportedly willing to accept the following as authors' amendments, based on alternative approach number 1), above:

Delete the current language of this bill and, instead, amend Section 4629.5(b) of the Welfare & Institutions Code (added by SB 74), as follows:

(b) To promote transparency, each regional center shall include on its Internet Web site, as expeditiously as possible, at least all of the following:

- (1) Regional center annual independent audits.
- (2) Biannual fiscal audits conducted by the department.
- (3) Regional center annual reports pursuant to Section 4639.5.
- (4) Contract awards, including the organization or entity awarded the contract, and the amount and purpose of the award.

(5) The actual rates paid to each vendor.

(6) Any public funds provided to a nonprofit housing organization outside the request for proposals process.

~~(5)~~ (7) Purchase of service policies.

~~(6)~~ (8) The names, types of service, principals, and contact information of all vendors, except consumers or family members of consumers.

~~(7)~~ (9) Board meeting agendas and approved minutes of open meetings of the board and all committees of the board.

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~~(8)~~ (10) Bylaws of the regional center governing board.

~~(9)~~ (11) The annual performance contract and year-end performance contract entered into with the department pursuant to this division.

~~(10)~~ (12) The biannual Home and Community-based Services Waiver program review conducted by the department and the State Department of Health Care Services.

~~(11)~~ (13) The board-approved transparency and public information policy.

~~(12)~~ (14) The board-approved conflict-of-interest policy.

(15) Conflict of interest disclosures.

~~(13)~~ (16) Reports required pursuant to Section 4639.5.

(17) Any legal settlements that can be disclosed.

REGISTERED SUPPORT / OPPOSITION :

Support

ResCoalition (sponsor)
Equate. Advocate.

Opposition

Association of Regional Center Agencies (ARCA)

Analysis Prepared by : Eric Gelber / HUM. S. / (916) 319-2089

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Senate Bill (SB) 161

BILL SUMMARY: This bill would authorize a school district to provide school employees with voluntary emergency medical training to provide an emergency anti-seizure medication to students having a seizure and are in an emergency situation in accordance with developed guidelines. The bill has passed the Education Committee and at printing, it is in the Appropriations Committee.

BACKGROUND: Existing law provides that school personnel with voluntary medical training may provide emergency medical assistance to students with diabetes while encountering severe hypoglycemia.

This bill would mirror that process for students experiencing a seizure.

ANALYSIS/DISCUSSION: Students with epilepsy may experience seizure(s) during the school day that may: 1) pose a barrier in receiving Free Appropriate Public Education (FAPE); 2) pose a barrier to their meaningful participation during a typical school day; and/ or 3) put them at risk of serious injury or death if no intervention is provided.

This bill would create a *voluntary* process for parents to request that a their child's school offer voluntary training to staff so that in the event their child has a seizure during the school day, legally prescribed emergency medication may be administered in accordance with guidelines (which are not currently available).

The California Teachers Association opposes the bill because it: 1) does not provide funding for training; 2) fails to recognize multiple types of seizures; 3) does not address the privacy and dignity of the student (it is a rectally delivered medication); 4) staff liability; and 5) time required to observe students for side effects of medication.

The California Association of School Business Officials, Health Officers Association of California, Special Education Local Plan Area Administrators, and numerous County Boards of Education support the bill since it would provide students with an out-of-hospital intervention that could protect the student's health.

COUNCIL STRATEGIC PLAN OBJECTIVE: Shape public policy that positively impacts Californians with developmental disabilities and their families.

PRIOR COMMITTEE ACTIVITY: On April 21, 2011LPPC took action to recommend that the Council support SB 161and consider amendments that ensure that student's health, safety, privacy and dignity during the emergency medical intervention.

LPPC RECOMMENDATION(S): Support SB 161 with amendments to support the protection of the student's health, safety, privacy and dignity during the intervention.

ATTACHMENTS: SB 161 and Senate Health Committee analysis

PREPARED: Melissa C. Corral, April 29, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 9, 2011

SENATE BILL

No. 161

Introduced by Senator Huff
(Coauthor: Senator Rubio)
(Coauthor: Assembly Member Halderman)

February 2, 2011

An act to add and repeal Section 49414.7 of the Education Code, relating to pupil health.

LEGISLATIVE COUNSEL'S DIGEST

SB 161, as amended, Huff. Schools: emergency medical assistance: administration of epilepsy medication.

Existing law provides that in the absence of a credentialed school nurse or other licensed nurse onsite at the school, a school district is authorized to provide school personnel with voluntary medical training to provide emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia.

This bill would authorize a school district to provide school employees with voluntary emergency medical training to provide, in the absence of a credentialed school nurse or other licensed nurse onsite at the school, emergency medical assistance to pupils with epilepsy suffering from seizures, in accordance with guidelines developed by specified entities. The bill would allow a parent or guardian of a pupil with epilepsy who has been prescribed ~~Diastat~~ *an emergency antiseizure medication* by the pupil's health care provider, to request the pupil's school to have one or more of its employees receive voluntary training, as specified, in order to administer ~~Diastat~~ *the emergency antiseizure medication*, as defined, in the event that the pupil suffers a seizure when

a nurse is not available. The bill would require a school that ~~decides~~ *elects* to train school employees to distribute an electronic notice, as specified, to all staff regarding the request. *The bill would authorize the State Department of Education to include, on its Internet Web site, a clearinghouse of best practices in training nonmedical personnel in administering an emergency antiseizure medication pursuant to these provisions.* The bill would make various legislative findings and declarations and state the intent of the Legislature in enacting this measure. The bill would repeal these provisions on January 1, 2017.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) All individuals with exceptional needs have a right to
4 participate in a free appropriate public education, and that special
5 instruction and services for these individuals are needed in order
6 to ensure they have the right to an appropriate educational
7 opportunity to meet their unique needs in compliance with the
8 federal Individuals with Disabilities Education Act (20 U.S.C. Sec.
9 1400 et seq.).

10 ~~(2) The federal Food and Drug Administration has determined~~
11 ~~that Diastat is an emergency medication approved for~~
12 ~~administration by trained, nonmedical persons.~~

13 (3) If all of the following specific circumstances are met, then
14 the safety and welfare of a pupil may be compromised,
15 necessitating the authorization of nonmedical school staff, who
16 have volunteered and been trained, to administer Diastat to a pupil:

17 (A) A pupil's health care provider states that Diastat must be
18 administered within a timeframe that a licensed medical person or
19 a paramedic cannot reasonably be expected to respond and be
20 available.

21 (B) Failure to administer Diastat in a timely manner can
22 reasonably be expected to result in death or permanent physical
23 injury to the pupil.

24 (C) ~~Diastat and the procedure for its administration has been~~
25 ~~found to be safe from harmful side effects by competent personnel.~~

1 (2) *The safety and welfare of a pupil with epilepsy is*
2 *compromised without immediate access to an emergency*
3 *antiseizure medication and, therefore, clarification is needed to*
4 *ensure that nonmedical school staff, who have volunteered and*
5 *have been trained in its correct administration, may administer*
6 *an emergency antiseizure medication.*

7 (3) *As used in this section, "immediate access" means the time*
8 *period that the pupil's health care provider states that an*
9 *antiseizure medication must be administered, provided that it is*
10 *within the timeframe that a licensed medical person or paramedic*
11 *can reasonably be expected to respond and be available.*

12 (b) It is the intent of the Legislature that individuals with
13 exceptional needs and children with disabilities under the federal
14 Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101
15 et seq.) and Section 504 of the federal Rehabilitation Act of 1973
16 (29 U.S.C. Sec. 794) shall have a right to an appropriate
17 educational opportunity to meet their unique needs, and that
18 children suffering from seizures due to epilepsy have the right to
19 appropriate programs and services that are designed to meet their
20 unique needs. In order to meet that goal, it is the intent of the
21 Legislature to authorize nurses to train and supervise employees
22 of school districts and county offices of education to administer
23 ~~Diastat~~ *an emergency antiseizure medication* to children with
24 epilepsy in the public schools. The American Academy of
25 Pediatrics and the Epilepsy Foundation of America support training
26 of school employees to administer ~~Diastat~~ *an emergency antiseizure*
27 *medication* and believe that ~~Diastat~~ *an emergency antiseizure*
28 *medication* may be safely and effectively administered by trained
29 school employees. The Legislature further finds and declares that,
30 in the absence of a credentialed school nurse or other licensed
31 nurse onsite at the school, it is in the best interest of the health and
32 safety of children to allow trained school employees to administer
33 ~~Diastat~~ *an emergency antiseizure medication* to pupils in public
34 schools.

35 SEC. 2. Section 49414.7 is added to the Education Code, to
36 read:

37 49414.7. (a) It is the intent of the Legislature that, whenever
38 possible, ~~Diastat~~ *an emergency antiseizure medication* should be
39 administered by a school nurse *or licensed vocational nurse* who
40 has been trained in its administration.

(b) Notwithstanding Sections 2052 and 2732 of the Business and Professions Code, in the absence of a credentialed school nurse or other licensed nurse onsite at the school, a school district may provide school employees with voluntary emergency medical training to provide emergency medical assistance to pupils with epilepsy suffering from seizures. A school employee with voluntary emergency medical training shall provide this emergency medical assistance in accordance with the guidelines established *assistance using a training plan approved on the department's Internet Web site* pursuant to subdivision ~~(k)~~ (m), and the performance instructions set forth by the licensed health care provider of the pupil. A school employee who does not volunteer or who has not been trained pursuant to subdivision ~~(k)~~ (m) shall not be required to provide emergency medical assistance pursuant to this section.

(c) If a pupil with epilepsy has been prescribed ~~Diastat~~ *an emergency antiseizure medication* by his or her health care provider, the pupil's parent or guardian may request the pupil's school to have one or more of its employees receive training pursuant to this section in the administration of ~~Diastat~~ *an emergency antiseizure medication* in the event that the pupil suffers a seizure when a nurse is not available.

(d) Pursuant to Section 504 of the federal Rehabilitation Act of 1973, as amended, (29 U.S.C. Sec. 794), upon receipt of the parent's or guardian's request *pursuant to subdivision (c)*, the school shall notify the parent or guardian that his or her child may qualify for services or accommodations *under the Section 504 plan*, assist the parent or guardian with the exploration ~~of that option, including, but not limited to, the development of a seizure action plan in accordance with the parent's or guardian's direction of that option~~, and encourage the parent or guardian to adopt that option if it is determined that the child is eligible for a Section 504 plan.

(e) The school may ask the parent or guardian to sign a notice verifying that the parent or guardian was given information about Section 504 of the federal Rehabilitation Act of 1973, and that the parent or guardian understands that it is his or her right to request a Section 504 plan at any time.

(f) If the parent or guardian does not choose to have the pupil assessed for a Section 504 plan, the school may create an individualized health plan, seizure action plan, or other appropriate

1 health plan designed to acknowledge and prepare for the child's
2 health care needs in school. The plan may include the involvement
3 of trained volunteer school employees *or a licensed vocational*
4 *nurse*.

5 ~~(g) If a school decides to train school employees pursuant to~~
6 ~~this section, the school shall distribute an electronic notice to all~~
7 ~~staff that states all of the following:~~

8 ~~(1) The notice is a request for volunteers to administer Diastat~~
9 ~~to a pupil experiencing a severe epileptic seizure, in the absence~~
10 ~~of a school nurse.~~

11 ~~(2) Diastat is an FDA-approved, predosed, rectally administered~~
12 ~~gel that reduces the severity of epileptic seizures.~~

13 ~~(3) A volunteer will receive training from a licensed health~~
14 ~~professional regarding the administration of Diastat.~~

15 ~~(4) Any agreement by an employee to administer Diastat is~~
16 ~~voluntary, and no employee of the school or district shall directly~~
17 ~~or indirectly use or attempt to use his or her authority or influence~~
18 ~~for the purpose of intimidating, threatening, coercing, or attempting~~
19 ~~to intimidate, threaten, or coerce, any staff member who does not~~
20 ~~choose to volunteer.~~

21 ~~(g) If a school elects to train employees pursuant to this section,~~
22 ~~the school shall ensure the following:~~

23 ~~(1) A volunteer receives training from a licensed health care~~
24 ~~professional regarding the administration of an emergency~~
25 ~~antiseizure medication. A staff member who has completed training~~
26 ~~shall, if he or she has not administered an emergency antiseizure~~
27 ~~medication within the prior two years and there is a pupil enrolled~~
28 ~~in the school who may need the administration of an antiseizure~~
29 ~~medication, attend a new training program to retain the ability to~~
30 ~~administer an emergency antiseizure medication.~~

31 ~~(2) Any agreement by an employee to administer an emergency~~
32 ~~antiseizure medication is voluntary, and no employee of the school~~
33 ~~or school district shall directly or indirectly use or attempt to use~~
34 ~~his or her authority or influence for the purpose of intimidating,~~
35 ~~threatening, coercing, or attempting to intimidate, threaten, or~~
36 ~~coerce any staff member who does not choose to volunteer,~~
37 ~~including, but not limited to, direct contact with the employee.~~

38 ~~(3) Any employee who volunteers pursuant to this section may~~
39 ~~rescind his or her offer to administer an emergency antiseizure~~
40 ~~medication up to three days after the completion of the training.~~

1 *After that time, a volunteer may rescind his or her offer to*
2 *administer an emergency antiseizure medication with a two-week*
3 *notice, or until a new individual health plan or Section 504 plan*
4 *has been developed for an affected pupil, whichever is less.*

5 *(4) The school shall distribute an electronic notice to all staff*
6 *that states the following information in bold print:*

7 *(A) A description of the volunteer request, stating that the*
8 *request is for volunteers to administer an emergency antiseizure*
9 *medication to a pupil experiencing a severe epileptic seizure, in*
10 *the absence of a school nurse, and that this emergency antiseizure*
11 *medication is an FDA-approved, predosed, rectally administered*
12 *gel that reduces the severity of epileptic seizures.*

13 *(B) A description of the training that the volunteer will receive*
14 *pursuant to paragraph (1).*

15 *(C) A description of the voluntary nature of the volunteer*
16 *program, which includes the information described in paragraph*
17 *(2).*

18 *(D) The volunteer recision timelines described in paragraph*
19 *(3).*

20 *(h) An employee who volunteers pursuant to this section shall*
21 *not be required to administer an emergency antiseizure medication*
22 *until completion of the training program adopted by the school*
23 *and documentation of completion is recorded in his or her*
24 *personnel file.*

25 *(i) If a school elects to participate pursuant to this section, the*
26 *school shall ensure that each volunteer will be provided defense*
27 *and indemnification by the school, in accordance with Division*
28 *3.6 (commencing with Section 810) of Title 1 of the Government*
29 *Code. This information shall be reduced to writing, provided to*
30 *the volunteer, and retained in the volunteer's personnel file.*

31 ~~*(h)*~~

32 *(j) If there are no volunteers, then the school shall renotify the*
33 *pupil's parent or guardian of the option to be assessed for services*
34 *and accommodations guaranteed under Section 504 of the federal*
35 *Rehabilitation Act of 1973.*

36 ~~*(i) A school that chooses*~~

37 *(k) A school that elects to participate pursuant to this section*
38 *shall have in place a school plan that shall include, but not be*
39 *limited to, all of the following:*

(1) Identification of existing licensed staff within the district or region who could be trained in the administration of ~~Diastat an emergency antiseizure medication~~ and could be available to respond to an emergency need to administer ~~Diastat an emergency antiseizure medication~~. The school shall consult with the school district or county office of education to obtain this information.

(2) Identification of pupils who may require the administration of ~~Diastat an emergency antiseizure medication~~.

(3) Written authorization from the parent or guardian for a nonmedical school employee to administer ~~Diastat an emergency antiseizure medication~~.

(4) The requirement that the parent or guardian notify the school if the pupil has had ~~Diastat an emergency antiseizure medication~~ administered within the past four hours on a schoolday.

(5) Notification of the parent or guardian that ~~Diastat an emergency antiseizure medication~~ has been administered.

(6) A written statement from the pupil's health care practitioner that shall include, but not be limited to, all of the following:

(A) The pupil's name.

(B) The name and purpose of the medication.

(C) The prescribed dosage.

(D) Detailed seizure symptoms, including frequency, type, or length of seizures that identify when the administration of ~~Diastat an emergency antiseizure medication~~ becomes necessary.

(E) The method of administration.

(F) The frequency with which the medication may be administered.

(G) The circumstances under which the medication may be administered.

(H) Any potential adverse responses by the pupil and recommended mitigation actions, including when to call emergency services.

(I) A protocol for observing the pupil after a seizure, including, but not limited to, whether the pupil should rest in the school office, whether the pupil may return to class, and the length of time the pupil should be under direct observation.

(J) *Following a seizure, the pupil's parent and guardian and the school nurse shall be contacted to continue the observation plan as established in subparagraph (I).*

~~(j) A school that chooses~~

(l) *A school that elects to allow volunteers to administer ~~Diastat~~ an emergency antiseizure medication shall compensate a volunteer when the administration of ~~Diastat~~ an emergency antiseizure medication and subsequent monitoring of a pupil requires a volunteer to work beyond his or her normally scheduled hours.*

~~(k)~~

(m) (1) The Legislature encourages the Epilepsy Foundation of America to develop guidelines for the training and supervision of school employees in providing emergency medical assistance to pupils with epilepsy suffering from seizures. The guidelines may be developed in cooperation with the State Department of Education, the California School Nurses Organization, the California Medical Association, and the American Academy of Pediatrics. *Upon development of the guidelines, the department may approve the guidelines for distribution and make those guidelines available upon request.*

(2) *The department may include, on its Internet Web site, a clearinghouse for best practices in training nonmedical personnel to administer an emergency antiseizure medication to pupils. Before a training program is placed on the best practices clearinghouse, it shall be approved by the Professional Advisory Board of the Epilepsy Foundations of Greater Los Angeles, San Diego County, and Northern California, in consultation with the department.*

~~(2)~~

(3) Training established pursuant to this subdivision shall include, but not be limited to, all of the following:

(A) Recognition and treatment of different types of seizures.

(B) Administration of ~~Diastat~~ an emergency antiseizure medication.

(C) Basic emergency followup procedures, including, but not limited to, calling the emergency 911 telephone number and contacting the pupil's parent or guardian.

(D) Techniques and procedures to ensure pupil privacy.

(4) *Any written materials used in the training shall be retained by the school.*

~~(3)~~

(5) Training established pursuant to this subdivision shall be conducted by one or more of the following:

(A) A physician and surgeon.

1 (B) A ~~physician and surgeon's~~ *physician's* assistant.

2 (C) A credentialed school nurse.

3 (D) A registered nurse.

4 (E) A certificated public health nurse.

5 ~~(4)~~

6 (6) Training provided in accordance with the manufacturer's
7 instructions, the pupil's health care provider's instructions, and
8 guidelines established pursuant to this section shall be deemed
9 adequate training for purposes of this section.

10 ~~(5)-(A)~~

11 (n) (1) A school employee shall notify the credentialed school
12 nurse assigned to the school district if he or she administers ~~Diastat~~
13 *an emergency antiseizure medication* pursuant to this section.

14 ~~(B)~~

15 (2) If a credentialed school nurse is not assigned to the school
16 district, the school employee shall notify the superintendent of the
17 school district, or his or her designee, if he or she administers
18 ~~Diastat~~ *an emergency antiseizure medication* pursuant to this
19 section.

20 ~~(C)~~

21 (3) A school shall retain all records relating to the administration
22 of ~~Diastat~~ *an emergency antiseizure medication* while a pupil is
23 under the supervision of school staff.

24 ~~(6)~~

25 (o) The pupil's parent or guardian shall provide all materials
26 necessary to administer ~~Diastat~~ *an emergency antiseizure*
27 *medication*, including the information described in paragraph (6)
28 of subdivision ~~(i)~~ (k). A school shall not be responsible for
29 providing any of the necessary materials.

30 ~~(f) For purposes of this section, "Diastat" means diazepam rectal~~
31 ~~gel, marketed as Diastat AeuDial, approved by the federal Food~~
32 ~~and Drug Administration for patients with epilepsy for the~~
33 ~~management of seizures.~~

34 (p) For purposes of this section, the following definitions apply:

35 (1) An "emergency antiseizure medication" means diazepam
36 rectal gel and emergency medications approved by the federal
37 Food and Drug Administration for patients with epilepsy for the
38 management of seizures by persons without the medical credentials
39 listed in paragraph (5) of subdivision (m).

1 (2) *“Emergency medical assistance” means the administration*
2 *of an emergency antiseizure medication to a pupil suffering from*
3 *an epileptic seizure.*

4 ~~(m)~~

5 (q) This section shall remain in effect only until January 1, 2017,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2017, deletes or extends that date.

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BILL ANALYSIS

SENATE HEALTH
 COMMITTEE ANALYSIS
 Senator Ed Hernandez, O.D., Chair

BILL NO: SB 161
 S
 AUTHOR: Huff
 B
 AMENDED: March 9, 2011
 HEARING DATE: April 6, 2011
 1
 CONSULTANT:
 6
 Trueworthy
 1

SUBJECT

Schools: emergency medical assistance: administration of
 epilepsy medication

SUMMARY

This bill would allow non-medical school personnel who undergo voluntary training to administer the drug Diastat to a pupil suffering an epileptic seizure.

CHANGES TO EXISTING LAW

Existing federal law:

The Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability by employers, public accommodations, state and local governments, public and private transportation, and in telecommunications.

The Individuals with Disabilities Education Act (IDEA) governs Individualized Educational Programs (IEPs) and the special education process. IDEA guarantees children with disabilities a "free appropriate public education" (FAPE) in the least restrictive environment (LRE).

Section 504 of the Rehabilitation Act of 1973 (Section 504) provides federal financial assistance to state and local education agencies to guarantee special education and

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related services to eligible children with disabilities.

Requires school districts to provide FAPE to each qualified person with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the person's disability, which includes reasonable accommodations required for the management of chronic medical conditions.

Existing state law:

Requires the governing board of any school district to give diligent care to the health and physical development of students, which may include employing properly certified persons.

Provides that each student who is required to take prescribed medication by a physician, may be assisted by

the school nurse or other designated school personnel if the school district receives a written statement from the physician detailing the method, amount, and time schedules by which the medication is to be taken, and a written statement from the parent or guardian of the student, indicating the desire that the school district assist the pupil in the matters set forth in the physician's statement.

Provides that no school district, officer of any school district, school principal, physician, or hospital treating a student shall be held liable for the reasonable treatment of a child without the consent of a parent or guardian, when the child is ill or injured during regular school hours, requires reasonable medical treatment, and the parent or guardian cannot be reached, unless the parent or guardian has previously filed with the school district a written objection to any medical treatment other than first aid.

Authorizes non-medical school personnel to administer the following medication to a student in an emergency, after receiving specified training:

Emergency epinephrine auto-injectors. A prescription for an auto-injector for a specific

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student is not required; the prescription is for the school.

Glucagon may be administered to students with diabetes suffering from severe hypoglycemia in the absence of a credentialed school nurse or other licensed nurse onsite at the school.

Authorizes non-medical school personnel to assist or administer medication to a student on a routine, non-emergency basis the following:

Assisting in the administration of prescribed medication, or in the self-administration of prescription auto-injectable epinephrine.

Assisting in administration of prescribed medication or in the self-administration of prescription inhaled asthma medication.

Assisting if the health care provider gives a written statement with specific information, such as the medication the pupil is to take, the dosage, and the period of time during which the medication is to be taken, and if the parent provides a written statement initiating a request to have the medication administered or otherwise assisted in the administration of the medication.

Sets forth the scope of practice for nursing through the Nursing Practice Act, which includes the administration of medication, and prohibits any person from engaging in the practice of nursing without a license.

This bill:

Makes various legislative findings and declarations, including the declaration that whenever possible, Diastat should be administered by a school nurse who has been trained in its administration.

Authorizes a school district to provide school employees with voluntary medical training to provide emergency medical assistance to students suffering from an epileptic seizure.

Requires a school employee with voluntary emergency medical training to provide this emergency medical assistance in accordance with guidelines that the Epilepsy Foundation of America is encouraged to develop.

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The guidelines may be developed in coordination with the State Department of Education, the California Nurses Organization, the California Medical Association, and the American Academy of Pediatrics.

Prohibits a school employee, who does not volunteer or who has not been trained, from being required to provide emergency medical assistance.

Authorizes a parent or guardian of a pupil with epilepsy who has been prescribed Diastat to request the school have one or more of its employees receive training in the administration of Diastat.

Requires, upon receipt of the parent's or guardian's request, the school to notify the parent or guardian that his or her child may qualify for services or accommodations, pursuant to Section 504. Requires the school to assist in the exploration of that option.

Authorizes a school to ask the parent or guardian to sign a notice verifying they were given information about Section 504 and they understand it is their right to request a Section 504 plan at any time.

Authorizes a school to create an individualized health plan, seizure action plan, or other appropriate health plan designed to acknowledge and prepare for the child's health care needs in school if the parent chooses to not have the pupil assessed for a Section 504 plan. The plan may include the involvement of trained volunteer school employees.

Authorizes a school that decides to train voluntary school employees to distribute an electronic notice to all staff that states all of the following:

1. The notice is a request for volunteers to administer Diastat to a pupil experiencing a severe epileptic seizure, in the absence of a school nurse.
2. Diastat is an FDA-approved, pre-dosed, rectally-administered gel that reduces the severity of epileptic seizures.
3. A volunteer will receive training from a licensed health professional regarding the administration of Diastat.
4. Any agreement by an employee to administer Diastat

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is voluntary, and no employee of the school or district shall directly or indirectly use or attempt to use his or her authority or influence for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce, any staff member who does not choose to volunteer.

Requires a school to re-notify the pupil's parent or guardian of the Section 504 options if there are no volunteers.

Encourages the Epilepsy Foundation to develop guidelines for training and supervision.

Requires a school that chooses to train school employees to have in place a school plan that includes:

1. Identification of existing licensed staff within the district or region who could be trained in the administration of Diastat and could be available to respond to an emergency need to administer Diastat.
2. Identification of pupils who may require the

- administration of Diastat.
3. Written authorization from the parent or guardian for a non-medical school employee to administer Diastat.
 4. A requirement that the parent or guardian notify the school if the pupil has had Diastat administered within the past four hours on a school day.
 5. Notification to the parent or guardian that Diastat has been administered.
 6. A written statement from the pupil's health care practitioner that shall include all of the following:
 - a) The pupil's name.
 - b) The name and purpose of the medication.
 - c) The prescribed dosage.
 - d) Detailed seizure symptoms, including frequency, type, or length of seizures that identify when the administration of Diastat becomes necessary.
 - e) The method of administration.
 - f) The frequency with which the medication may be administered.
 - g) The circumstances under which the medication may be administered.
 - h) Any potential adverse responses by the

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- pupil and recommended actions, including when to call emergency services.
- i) A protocol for observing the pupil after a seizure.

Requires a school to compensate a volunteer when the administration of Diastat and subsequent monitoring of a pupil requires the person to work beyond his or her normally scheduled hours.

Requires the training to include the following:

1. Recognition and treatment of different types of seizures.
2. Administration of Diastat.
3. Basic emergency follow-up procedures including, calling 911 and contacting the pupil's parent or guardian.
4. Techniques and procedures to ensure pupil privacy.

Requires training to be conducted by one or more of the following:

1. A physician and surgeon.
2. A physician and surgeon's assistant.
3. A credentialed school nurse.
4. A registered nurse.
5. A certificated public health nurse.

Deems training provided in accordance with the manufacturer's instructions, the pupil's health care provider's instructions and guidelines as adequate training.

Requires a school employee to notify the credentialed school nurse assigned to the school district if Diastat is administered. If a credentialed school nurse is not assigned to the school district, the school employee shall notify the superintendent of the school district, or his or her designee.

Requires a school to retain all records relating to the administration of Diastat.

Requires the pupil's parent or guardian to provide all materials necessary to administer Diastat.

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Defines "Diastat" as a diazepam rectal gel, marketed as Diastat AcuDial, approved by the federal Food and Drug Administration for patients with epilepsy for the management of seizures.

Sunsetts the provisions of this bill on January 1, 2017,

FISCAL IMPACT

This bill has not been analyzed by a fiscal committee.

BACKGROUND AND DISCUSSION

According to the author, uncontrolled seizures can damage a child's developing brain and can impact academic performance, memory, learning, and result in social-emotional challenges. Some children with epilepsy are susceptible to prolonged seizures and require access to a life-saving emergency medication. Diastat Acudial, a pre-dosed preparation of diazepam gel, is the standard out-of-hospital treatment for prolonged seizures. Diastat is a FDA-approved emergency medication and is a safe and effective treatment, specifically designed to be administered by people without medical training.

The author states that for over 10 years it was common in California schools to have nurses, or where unavailable, trained non-medical personnel to administer the doctor-prescribed Diastat in an emergency situation to a student when suffering a severe, possibly life-threatening seizure. In October 2009, however, a nursing education consultant to the Board of Registered Nursing (BRN) advised that there is no provision in the Nursing Practice Act for unlicensed school personnel to administer Diastat. The BRN has further stated that absent an authorizing statute, school nurses cannot train or supervise unlicensed personnel to administer Diastat. As a consequence, nurses are refusing to train school personnel, and schools are reluctant to have staff, even those already trained, administer Diastat. Some schools are telling parents they must be available to come to the school to administer Diastat or are calling 911 in an emergency. The author contends that either of these solutions results in delays

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in treatment that places the child in danger of serious injury, or worse. SB 161 will allow schools to provide the fastest, safest and most effective way of protecting the health and safety of children with epilepsy in schools.

Epilepsy background and statistics

Epilepsy is defined as a chronic neurological condition in which the individual is susceptible to several seizures. A seizure is a sudden, temporary interruption of the normal electrical/chemical activity in the brain, resulting in a change in sensation, awareness or behavior. A seizure can range from a brief disruption of senses, muscle spasms, or odd sensations to short periods of unconsciousness and convulsions. Currently there is no known cure for epilepsy.

Epilepsy is a complex condition and there are many types of seizures associated with epilepsy. The type of seizure a person has depends on a variety of things, such as the part of the brain affected and the underlying cause of the seizure. The type of medicine individuals with epilepsy take depends on the type of seizures.

Almost 3 million people in the U.S. have some form of epilepsy. About 200,000 new cases of seizure disorders and epilepsy are diagnosed each year. According to the Epilepsy Foundation, as many as 325,000 school-age children, ages 5-14, have epilepsy. Epilepsy affects over 90,000 children across California.

Diastat

Diastat --diazepam rectal gel and its trademark administration system-- was first approved for use by the FDA in the United States in 1997 as a treatment for breakthrough seizures in adults and children 2 years old and over. This is the only FDA-approved, at-home medication for the treatment of cluster seizures. Diastat was specifically developed to be administered by people without medical training and is considered the fastest, safest and most effective way to address epileptic seizures. It is often prescribed for people who have experienced acute repetitive seizures, or "cluster" seizures. Dosages are determined on an individual basis, depending upon the condition to be treated, the severity of symptoms, the body weight of the patient, and any comorbidity conditions the patient may have.

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Diastat is intended to be kept handy so that a caregiver can attempt to stop the seizures by administering the drug relatively quickly. Diastat is a gel formulation of Diazepam (valium) that is administered rectally. The delivery system includes a plastic applicator with a flexible, molded tip and is provided in fixed unit-doses of 5, 10, 15 and 20 mg. A pharmacist simply dials the syringe to the physician's prescribed dosage before it is dispensed to the patient.

The most common side effect is sleepiness. Other less frequent side effects include skin rash, dizziness, pain, headache, stuffy nose, abdominal pain, nervousness, diarrhea, feeling unsteady or clumsy, and wheezing.

Most seizure patients, no matter how well-managed through maintenance medication, will likely experience breakthrough seizures throughout their lifetime. Possibly as many as 35 percent of patients on anti-seizure medications may not be adequately controlled. Between 50,000 and 200,000 generalized convulsive status epilepticus seizures occur every year in the United States, with an overall mortality rate of 20 percent. Additional statistics show that status seizures lasting more than one hour have a mortality rate of 32 percent, compared with 2.7 percent for seizures of shorter duration.

Health care needs in schools

In classrooms throughout California, there are numerous children with special medical needs, including gastronomy feeding tubes, oxygen administration, tracheal suctioning and monitoring for seizures. California's nurse-to-pupil ratio is approximately 1:2,200. According to the California Basic Educational Data System (CBEDS), about one-half of school districts do not have a school nurse.

Federal laws and 504 plans

Two federal anti-discrimination statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA), together establish rights for eligible students in California's public schools. They serve to protect students from discrimination based upon their disability. In general, a student will be determined to have a disability

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under Section 504 if he/she has a mental or physical impairment that substantially limits one or more major life activities, such as eating, breathing, caring for oneself, performing manual tasks, hearing, speaking, walking, and learning.

Section 504 requires school districts to provide FAPE to each qualified pupil, regardless of the nature or severity of the disability. An appropriate education may comprise of education in regular classes, education in regular classes with the use of related aids and services, or special education and related services in separate classrooms for all or portions of the school day.

A "504 plan" differs from an individualized education program (IEP) in that an IEP provides for specialized instruction while a 504 plan provides for accommodation due to a physical or mental impairment that does not require specialized instruction.

The Nursing Practice Act and the Bureau of Registered Nursing (BRN)

The Nursing Practice Act (NPA) specifies that medication administration is a nursing function that may not be performed by unlicensed personnel unless expressly authorized by statute.

The BRN has issued a legal opinion stating the NPA does not permit unlicensed school personnel to administer Diastat and the administration of Diastat constitutes the practice of nursing. The legal opinion further states that the NPA does not permit a nurse to train unlicensed school personnel knowing that the purpose for the training is to enable the administration of Diastat.

Exceptions to the Nursing Practices Act
Current law authorizes non-medical school personnel to administer emergency epinephrine auto-injectors in an emergency after receiving specified training. Current law also allows Glucagon to be administered to students with diabetes suffering from severe hypoglycemia in the absence of a credentialed school nurse or other licensed nurse onsite at the school.

The NPA does not prohibit nursing services in the case of

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an emergency.

Lawsuit specific to the administration of insulin.
In 2005, the American Diabetes Association (ADA) sued the State of California (K.C., et al. vs. Jack O'Connell, et al) asking the court to compel public school officials to comply with federal law by providing the assistance that California students with diabetes require to manage their diabetes during the school day. The California Department of Education (CDE) entered into a settlement with them and, as a part of the settlement, CDE issued a legal advisory that declared unlicensed but adequately trained school employees may administer insulin under the treating physician's orders and in accordance with the student's Section 504 Plan or IEP, in the absence of available licensed health care professionals.

Several nursing groups sued to overturn this portion of the legal advisory (American Nurses Assoc. v. Jack O'Connell), and in November 2008, a trial court judge ruled in their favor. Following the court ruling, ADA and CDE filed an appeal of the court ruling, and in April 2009, a California Court of Appeals ruled that the lower court's ruling is

"stayed" during the appeal. While this is not a decision on the merits of the case, it does mean that the lower court's ruling has no effect until the appeal is decided.

Therefore, the CDE may continue to advise districts that non-medical school personnel are authorized to administer insulin.

Related bills

SB 65 (Strickland) would authorize any pupil who has been diagnosed with cystic fibrosis and is required to take, during the regular school day, medication prescribed for him or her by a physician or surgeon, to be assisted by the school nurse or other designated school personnel, or may carry and self-administer prescription pancreatic enzymes if the school district receives specified written statements. SB 65 is pending before the Senate Education Committee.

Prior legislation

SB 1051 (Huff) of 2010 was very similar to this bill. SB 1051 was held on the Senate Appropriations Committee's

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suspense file.

AB 1802 (Hall) of 2010 would authorize a parent or guardian of a pupil with diabetes to designate one or more school employees as parent-designated school employees for the purpose of administering insulin to the pupil as necessary during the regular school day when a credentialed school nurse or other health care professional is not immediately available onsite at the school. Failed passage in Assembly Business, Professions, and Consumer Protection Committee.

SB 1200 (Leno) of 2010 would have required the Department of Managed Health Care and the Insurance Commissioner to develop regulations to ensure timeliness of care for school age children who must receive medically necessary services during school hours. Failed passage in the Assembly Appropriations Committee.

AB 2454 (Torlakson) of 2010 would have required the governing board of a school district to employ at least one school nurse, registered nurse, or licensed vocational nurse for every 750 pupils on and after July 1, 2020. The bill would have required registered nurses and licensed vocational nurses to provide health care services to pupils under the supervision of a school nurse. Failed passage in Assembly Appropriations Committee.

AB 1430 (Swanson) of 2009 would have required, with certain exceptions, that any medication that is administered to a pupil who is required to take, during the regular school day, medication prescribed for him or her by a physician or surgeon be administered by a health care professional operating within the scope of his or her practice. Failed passage in Assembly Business and Professions Committee.

AB 426 (Hall) of 2009 would have required the Department of Education, in consultation with specified entities, to recommend to the Legislature ways to address specific health-related needs of pupils on school campuses, including but not limited to, diabetes, asthma and obesity-related diseases. AB 426 was never heard.

AB 942 (Leno) Chapter 684, Statutes of 2003, authorizes

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each school district to provide voluntary emergency medical training to school personnel, as defined, to administer emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia, if certain performance standards for training and supervision are developed by the American Diabetes Association in cooperation with several other entities for approval and distribution by the State Department of Health Services' Diabetes Control Program, in the absence of a credentialed school nurse or other licensed nurse.

AB 559 (Wiggins), Chapter 458, Statutes of 2001, authorizes a school district or county office of education to provide emergency epinephrine auto-injectors to trained personnel, and authorizes the trained personnel to utilize those epinephrine auto-injectors to provide emergency medical aid to persons suffering from an anaphylactic reaction.

Arguments in support

Supporters write that Diastat is a safe and effective drug and allowing trained school personnel to administer Diastat could save an epileptic child from very serious injury. The Health Officers Association of California (HOAC) writes that without SB 161, school personnel would have to wait for the child's parent or an ambulance to arrive in order for the drug to be administered. Epilepsy California writes a student suffering from prolonged seizures that is prescribed and yet denied access to Diastat risks permanent brain damage or death. After five minutes, seizures are life threatening. The California Association of Suburban School Districts writes that Diastat is the first and only FDA-approved, acute layperson-administered medication and is the best option for providing a safe educational environment for students.

Disability Rights of California (DRC) contends SB 161 is an important step to providing children with epilepsy with a free appropriate education. DRC writes access to medication is important for children with disabilities who need it to be able to receive an education in the least restrictive environment with their peers. Riverside Unified School District writes SB 161 is a critical component of the overall medical and welfare care the district provides to special needs students.

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The Riverside County School Superintendents' Association writes that it is the unfortunate fiscal reality that we will not have nurses in our schools and we must adapt to that fiscal reality in a manner that provides the most health protection to the students.

Supporters state that it has been common practice for over 10 years for trained non-medical personnel to have the authority to administer doctor-prescribed Diastat to a student suffering a severe and possibly life threatening seizure. Supporters further contend that SB 161 is patterned after two existing laws which allow non-medical school personnel to administer drugs, Epinephrine and Glucagon. Supporters argue these medications must also be given in a specified and extremely short amount of time from the onset of the episode. Supporters argue Diastat, like Epinephrine and Glucagon, is a life-saving measure. If Diastat is administered incorrectly, the medication is not life-threatening, but a significant delay in receiving treatment can be.

Support if amended

The California Association of Joint Powers Authorities (CAJPA) writes that SB 161 does not contain needed "Good

Samaritan" liability immunity for the school employee or the school who agrees to participate in the volunteer program to help epileptic students in need. In these litigious times, CAJPA believes that adding this important liability protection is critical to the ultimate success of the proposed program. Otherwise, volunteers and schools will be very reluctant to agree to take on such important duties and responsibilities as proposed in SB 161.

Arguments in opposition

A coalition of union groups including, the California Teachers Association, California School Employees Association, American Nurses Association-California, California Nurses Association, California Labor Federation, Service Employees International Union - Nurses Alliance of California, and the California Federation of Teachers are opposed to SB 161 writing that Diastat is a dangerous medication that must be administered rectally to control seizures. The coalition writes that because a seizure is unpredictable, providing for any level of privacy is nearly impossible. The coalition further argues that school

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employees face legal liability if something goes wrong as school districts generally do not cover punitive damages. Opponents also argue that SB 161 does not require 911 to be called and in medical emergencies, a 911 call must be required.

The coalition supports having licensed, appropriately trained health care personnel provide the high quality care that is required to assure that not only children with disabilities but all school children have access to a free, fair and appropriate education. The United Nurses Association of California-Union of Health Care Professionals writes in opposition to SB 161, arguing the bill will "deskill the role of school nurses" at a risk to children.

Opponents further argue that if an employee is named in a lawsuit, they will have to go to court to defend themselves and there are no protections against punitive damages or criminal prosecution.

The California School Employees Association (CSEA) argues that training will be inadequate if provided at all, as the bill does not provide funding for any training. CSEA writes that if a Registered Nurse is not available to perform this duty, Licensed Vocational Nurses (LVNs) can and should be used as they are appropriately licensed and have the skills and ability to help epileptic students.

COMMENTS

- 1) Amendments in Education Committee. The following amendments were agreed to in the Senate Education committee to be taken in the Senate Health Committee:
- a) Clarification that a school is required to provide information about the possibility of eligibility for a 504 plan to a parent once the parent requests the school to have an employee receive training in the administration of Diastat.
 - b) Delete reference to "a physician and surgeon's

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assistant" and only reference "physician assistant" as those who may provide training to school employees. There is no such position as a surgeon's assistant.

2) Coercion issue. Concern has been raised that employees will face coercion and possible retaliation under SB 161.

While Section 49414.7 (b) of the bill states that a school employee who does not volunteer or who has not been trained shall not be required to provide emergency medical assistance, staff recommends the following amendments to clarify this issue:

i) Prohibit a face-to-face request for volunteers or face-to-face follow-up requesting volunteers.

ii) State that no response to the notice is required from school employees unless they are affirmatively volunteering.

iii) Add language to allow a school employee who has volunteered to opt-out by submitting written notification.

3) Volunteers. Staff recommends adding language in subsection (f) of the bill to encourage schools to first utilize LVNs prior to asking school employees to volunteer for training.

4) Definitions.

a) Concern has been raised about who the bill applies to. Staff recommends adding language to clarify the term "school employee" to mean any one or more employees of a school district who volunteer to be trained to administer emergency medical assistance to a pupil suffering an epileptic seizure.

b) Staff recommends defining "emergency medical assistance" to mean the administration of Diastat to a pupil suffering from an epileptic seizure.

c) Concern has been raised about using a brand name drug in legislation. Staff recommends using a broader definition and not the brand name drug.

5) Liability Concerns. Concern has been raised that employees will not be afforded the same protections they

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currently have because the employee is volunteering. While Section 49414.7(j) of the bill states that a school that chooses to allow volunteers to administer Diastat shall compensate a volunteer when the administration of Diastat and subsequent monitoring of a pupil requires a volunteer to work beyond his or her normally scheduled hours, staff recommends adding language to clarify that any actions undertaken as part of this section is considered to be within the current scope of their employment.

6) School Plan. Section 49414.7(i) outlines the requirements a school plan must include for school's choosing to participate. Staff recommends adding language to require a 911 call in the school plan. Training requirements outlined in (k)(2)(C) of the bill already include calling 911 as basic emergency follow-up procedures.

7) Training.

a) Section 49414.7 (k)(2) describes what the training shall include. Staff recommends adding language to require written materials covering the information described in this subsection to also be included and to require a school to retain the written materials.

- b) Section 49414.7 (k) in subsections (1), (2), (3), and (4) outline the training components. Staff recommends adding language to require documentation of a completed training by a school employee be maintained by both the school and school district.
- c) Section 49414.7 (k)(1) only encourages the Epilepsy Foundation of America to develop guidelines for training and supervision. The language is silent on what will occur in the absence of such development.
 - i) Staff recommends adding language to clarify that until such training guidelines are established and approved, the bill shall not take effect.
 - ii) Staff also recommends adding language to require the Department of Education to approve any guidelines used for training.
- d) Staff recommends adding language to require school employees who have volunteered for training to be

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required to receive updated training on an annual basis.

- e) Staff recommends adding language to clarify that a volunteer must receive training prior to administering Diastat in Section 49414.7(g)(3) of the bill.

POSITIONS

- Support: Association of Regional Center Agencies
The California Association of Joint Powers Authorities (If Amended)
California Association of School Business Officials
California Association of Suburban School Districts
California School Boards Association
Democrats for Education Reform
Disability Rights California
Epilepsy Foundation, California
Health Officers Association of California
Humboldt County Office of Education
Kern County Superintendent of Schools
Los Angeles County Office of Education
Los Angeles Unified School district
Orange County Department of Education
Riverside County School Superintendents' Association
Riverside Unified School District
Saddleback Valley Unified School District
San Bernardino County District Advocates for Better Schools
Small School Districts' Association
35 individuals
- Oppose: American Nurses Association-California,
California Labor Federation
The California Federation of Teachers
California Association for Nurse Practitioners
California Nurses Association
California School Employees Association
California School Nurses Organization
California School Employees Association
California Teachers Association

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Laborers International Union of North America,
Local 777
Service Employees International Union-Nurses
Alliance of California
United Nurses Associations of CA-Union of Health
Care Professionals
United Teachers Los Angeles

-- END --

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill (AB) 876- In-Home Supportive Services (IHSS)

SUMMARY: Existing law provides for the county-administered IHSS program, under which qualified aged, blind, and persons with disabilities receive services enabling them to remain in their own homes. Existing law prohibits a person from providing supportive services if he or she has been convicted of specified crimes in the previous 10 years. Existing law authorizes a recipient of services who wishes to employ a provider applicant who has been convicted of a specified offense to submit to the county a prescribed individual waiver, signed by the recipient, or by the recipient's authorized representative, and returned to the county welfare department. **This bill would prohibit a provider applicant from signing his or her own individual waiver form as the recipient's authorized representative.**

BACKGROUND: AB 876 is designed to modify the law in a way that problems associated with care providers' criminal background are addressed and that IHSS recipients are not put in an abusive situation.

ANALYSIS/DISCUSSION: IHSS allows qualified aged, blind, and persons with disabilities to receive services enabling them to remain in their own homes. The recipients are also allowed to choose who their care provider will be. If a provider has a criminal background within the last ten years and falls under the IHSS Tier 2 Exclusionary Crimes List they are still able to take care of the recipient as long as the recipient signs a waiver. However, the IHSS recipient can assign their provider to be an authorized representative who is allowed to sign their own waiver for the above circumstances.

COUNCIL STRATEGIC PLAN OBJECTIVE: Support public policies that positively impact the lives of persons with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: On April 21, 2011 the Legislative and Public Policy Committee (LPPC) voted to support AB 876

LPPC RECOMMENDATION(S): Support AB 876

ATTACHMENT(S): AB 876 and Assembly Committee on Human Services' analysis

PREPARED: Karim Alipourfard, May 11, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 876

Introduced by Assembly Member Valadao

February 17, 2011

An act to amend Section ~~12300~~ 12305.87 of the Welfare and Institutions Code, relating to in-home supportive services.

LEGISLATIVE COUNSEL'S DIGEST

AB 876, as amended, Valadao. In-Home Supportive Services program.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. *Existing law prohibits a person from providing supportive services if he or she has been convicted of specified crimes in the previous 10 years. Existing law authorizes a recipient of services who wishes to employ a provider applicant who has been convicted of a specified offense to submit to the county a prescribed individual waiver, signed by the recipient, or by the recipient's authorized representative, and returned to the county welfare department.*

~~This bill would make a technical, nonsubstantive change to these provisions.~~

This bill would prohibit a provider applicant from signing his or her own individual waiver form as the recipient's authorized representative.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12305.87 of the Welfare and Institutions
2 Code is amended to read:

3 12305.87. (a) (1) Commencing 90 days following the effective
4 date of the act that adds this section, a person specified in paragraph
5 (2) shall be subject to the criminal conviction exclusions provided
6 for in this section, in addition to the exclusions required under
7 Section 12305.81.

8 (2) This section shall apply to a person who satisfies either of
9 the following conditions:

10 (A) He or she is a new applicant to provide services under this
11 article.

12 (B) He or she is an applicant to provide services under this
13 article whose application has been denied on the basis of a
14 conviction and for whom an appeal of that denial is pending.

15 (b) Subject to subdivisions (c), (d), and (e), an applicant subject
16 to this section shall not be eligible to provide or receive payment
17 for providing supportive services for 10 years following a
18 conviction for, or incarceration following a conviction for, any of
19 the following:

20 (1) A violent or serious felony, as specified in subdivision (c)
21 of Section 667.5 of the Penal Code and subdivision (c) of Section
22 1192.7 of the Penal Code.

23 (2) A felony offense for which a person is required to register
24 under subdivision (c) of Section 290 of the Penal Code. For
25 purposes of this ~~subparagraph~~ paragraph, the 10-year time period
26 specified in this section shall commence with the date of conviction
27 for, or incarceration following a conviction for, the underlying
28 offense, and not the date of registration.

29 (3) A felony offense described in paragraph (2) of subdivision
30 (c) or paragraph (2) of subdivision (g) of Section 10980.

31 (c) Notwithstanding subdivision (b), an application shall not be
32 denied under this section if the applicant has obtained a certificate
33 of rehabilitation under Chapter 3.5 (commencing with Section
34 4852.01) of Title 6 of Part 3 of the Penal Code or *if* the information
35 or accusation against him or her has been dismissed pursuant to
36 Section 1203.4 of the Penal Code.

37 (d) (1) Notwithstanding subdivision (b), a recipient of services
38 under this article who wishes to employ a provider applicant who

has been convicted of an offense specified in subdivision (b) may submit to the county an individual waiver of the exclusion provided for in this section. This paragraph shall not be construed to allow a recipient to submit an individual waiver with respect to a conviction or convictions for offenses specified in Section 12305.81.

(2) The county shall notify a recipient who wishes to hire a person who is applying to be a provider and who has been convicted of an offense subject to exclusion under this section of that applicant's relevant criminal offense convictions that are covered by subdivision (b). The notice shall include both of the following:

(A) A summary explanation of the exclusions created by subdivision (b), as well as the applicable waiver process described in this subdivision and the process for an applicant to seek a general exception, as described in subdivision (e). This summary explanation shall be developed by the department for use by all counties.

(B) An individual waiver form, which shall also be developed by the department and used by all counties. The waiver form shall include both of the following:

(i) A space for the county to include a reference to any Penal Code sections and corresponding offense names or descriptions that describe the relevant conviction or convictions that are covered by subdivision (b) and that the provider applicant has in his or her background.

(ii) A statement that the service recipient, or his or her authorized representative, if applicable, is aware of the applicant's conviction or convictions and agrees to waive application of this section and employ the applicant as a provider of services under this article.

(3) To ensure that the initial summary explanation referenced in this subdivision is comprehensible for recipients and provider applicants, the department shall consult with representatives of county welfare departments and advocates for, or representatives of, recipients and providers in developing the summary explanation and offense descriptions.

(4) The individual waiver form shall be signed by the recipient, or by the recipient's authorized representative, if applicable, and returned to the county welfare department by mail or in person. *A provider applicant shall not sign his or her own individual waiver*

1 *form as the recipient's authorized representative.* The county shall
2 retain the waiver form and a copy of the provider applicant's
3 criminal offense record information search response until the date
4 that the convictions that are the subject of the waiver request are
5 no longer within the 10-year period specified in subdivision (b).

6 (5) An individual waiver submitted pursuant to this subdivision
7 shall entitle a recipient to hire a provider applicant who otherwise
8 meets all applicable enrollment requirements for the In-Home
9 Supportive Services program. A provider hired pursuant to an
10 individual waiver may be employed only by the recipient who
11 requested that waiver, and the waiver shall only be valid with
12 respect to convictions that are specified in that waiver. A new
13 waiver shall be required if the provider is subsequently convicted
14 of an offense to which this section otherwise would apply. A
15 provider who wishes to be listed on a provider registry or to provide
16 supportive services to a recipient who has not requested an
17 individual waiver shall be required to apply for a general exception,
18 as provided for in subdivision (e).

19 (6) Nothing in this section shall preclude a provider who is
20 eligible to receive payment for services provided pursuant to an
21 individual waiver under this subdivision from being eligible to
22 receive payment for services provided to one or more additional
23 recipients who obtain waivers pursuant to this same subdivision.

24 (7) The state and a county shall be immune from any liability
25 resulting from granting an individual waiver under this subdivision.

26 (e) (1) Notwithstanding subdivision (b), an applicant who has
27 been convicted of an offense identified in subdivision (b) may seek
28 from the department a general exception to the exclusion provided
29 for in this section.

30 (2) Upon receipt of a general exception request, the department
31 shall request a copy of the applicant's criminal offender record
32 information search response from the applicable county welfare
33 department. Notwithstanding any other provision of law, the county
34 shall provide a copy of the criminal offender record information
35 search response, as provided to the county by the Department of
36 Justice, to the department. The county shall provide this
37 information in a manner that protects the confidentiality and
38 privacy of the criminal offender record information search
39 response. The state or federal criminal history record information

1 search response shall not be modified or altered from its form or
2 content as provided by the Department of Justice.

3 (3) The department shall consider the following factors when
4 determining whether to grant a general exception under this
5 subdivision:

6 (A) The nature and seriousness of the conduct or crime under
7 consideration and its relationship to employment duties and
8 responsibilities.

9 (B) The person's activities since conviction, including, but not
10 limited to, employment or participation in therapy education, or
11 community service, that would indicate changed behavior.

12 (C) The number of convictions and the time that has elapsed
13 since the conviction or convictions.

14 (D) The extent to which the person has complied with any terms
15 of parole, probation, restitution, or any other sanction lawfully
16 imposed against the person.

17 (E) Any evidence of rehabilitation, including character
18 references, submitted by the person, or by others on the person's
19 behalf.

20 (F) Employment history and current or former employer
21 recommendations. Additional consideration shall be given to
22 employer recommendations provided by a person who has received
23 or has indicated a desire to receive supportive or personal care
24 services from the applicant, including, but not limited to, those
25 services, specified in Section 12300.

26 (G) Circumstances surrounding the commission of the offense
27 that would demonstrate the unlikelihood of repetition.

28 (H) The granting by the Governor of a full and unconditional
29 pardon.

30 (f) If the department makes a determination to deny an
31 application to provide services pursuant to a request for a general
32 exception, the department shall notify the applicant of this
33 determination by either personal service or registered mail. The
34 notice shall include the following information:

35 (1) A statement of the department's reasons for the denial that
36 evaluates evidence of rehabilitation submitted by the applicant, if
37 any, and that specifically addresses any evidence submitted relating
38 to the factors in paragraph (3) of subdivision (e).

39 (2) A copy of the applicant's criminal offender record
40 information search response, even if the applicant already has

1 received a copy pursuant to Section 12301.6 or 12305.86. The
2 department shall provide this information in a manner that protects
3 the confidentiality and privacy of the criminal offender record
4 information search response.

5 (A) The state or federal criminal history record shall not be
6 modified or altered from its form or content as provided by the
7 Department of Justice.

8 (B) The department shall retain a copy of each individual's
9 criminal offender record information search response until the date
10 that the convictions that are the subject of the exception are no
11 longer within the 10-year period specified in subdivision (b), and
12 shall record the date the copy of the response was provided to the
13 individual and the department.

14 (C) The criminal offender record information search response
15 shall not be made available by the department to any individual
16 other than the provider applicant.

17 (g) (1) Upon written notification that the department has
18 determined that a request for exception shall be denied, the
19 applicant may request an administrative hearing by submitting a
20 written request to the department within 15 business days of receipt
21 of the written notification. Upon receipt of a written request, the
22 department shall hold an administrative hearing consistent with
23 the procedures specified in Section 100171 of the Health and Safety
24 Code, except where those procedures are inconsistent with this
25 section.

26 (2) A hearing under this subdivision shall be conducted by a
27 hearing officer or administrative law judge designated by the
28 director. A written decision shall be sent by certified mail to the
29 applicant.

30 (h) The department shall revise the provider enrollment form
31 developed pursuant to Section 12305.81 to include both of the
32 following:

33 (1) The text of subdivision (c) of Section 290 of the Penal Code,
34 subdivision (c) of Section 667.5 of the Penal Code, subdivision
35 (c) of Section 1192.7 of the Penal Code, and paragraph (2) of
36 subdivisions (c) and (g) of Section 10980.

37 (2) A statement that the provider understands that if he or she
38 has been convicted, or incarcerated following conviction for, any
39 of the crimes specified in the provisions identified in paragraph
40 (b) in the last 10 years, and has not received a certificate of

1 rehabilitation or had the information or accusation dismissed, as
2 provided in subdivision (c), he or she shall only be authorized to
3 receive payment for providing in-home supportive services under
4 an individual waiver or general exception as described in this
5 section, and upon meeting all other applicable criteria for
6 enrollment as a provider in the program.

7 (i) (1) Notwithstanding the rulemaking provisions of the
8 Administrative Procedure Act (Chapter 3.5 (commencing with
9 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
10 Code), the department may implement and administer this section
11 through all-county letters or similar instructions from the
12 department until regulations are adopted. The department shall
13 adopt emergency regulations implementing these provisions no
14 later than July 1, 2011. The department may readopt any emergency
15 regulation authorized by this section that is the same as or
16 substantially equivalent to an emergency regulation previously
17 adopted under this section.

18 (2) The initial adoption of emergency regulations pursuant to
19 this section and one readoption of emergency regulations shall be
20 deemed an emergency and necessary for the immediate
21 preservation of the public peace, health, safety, or general welfare.
22 Initial emergency regulations and the one readoption of emergency
23 regulations authorized by this section shall be exempt from review
24 by the Office of Administrative Law. The initial emergency
25 regulations and the one readoption of emergency regulations
26 authorized by this section shall be submitted to the Office of
27 Administrative Law for filing with the Secretary of State and each
28 shall remain in effect for no more than 180 days, by which time
29 final regulations may be adopted.

30 (j) In developing the individual waiver form and all-county
31 letters or information notices or similar instructions, the department
32 shall consult with stakeholders, including, but not limited to,
33 representatives of the county welfare departments, and
34 representatives of consumers and providers. The consultation shall
35 include at least one in-person meeting prior to the finalization of
36 the individual waiver form and all-county letters or information
37 notices or similar instructions.

38 ~~SECTION 1. Section 12300 of the Welfare and Institutions~~
39 ~~Code is amended to read:~~

1 12300. (a) The purpose of this article is to provide in every
2 county in a manner consistent with this chapter and the annual
3 Budget Act those supportive services identified in this section to
4 aged, blind, or disabled persons, as defined under this chapter,
5 who are unable to perform the services themselves and who cannot
6 safely remain in their homes or abodes of their own choosing unless
7 these services are provided.

8 (b) Supportive services shall include domestic services and
9 services related to domestic services, heavy cleaning, personal
10 care services, accompaniment by a provider when needed during
11 necessary travel to health-related appointments or to alternative
12 resource sites, yard hazard abatement, protective supervision,
13 teaching and demonstration directed at reducing the need for other
14 supportive services, and paramedical services which make it
15 possible for the recipient to establish and maintain an independent
16 living arrangement.

17 (c) Personal care services shall mean all of the following:

18 (1) Assistance with ambulation.

19 (2) Bathing, oral hygiene, and grooming.

20 (3) Dressing.

21 (4) Care and assistance with prosthetic devices.

22 (5) Bowel, bladder, and menstrual care.

23 (6) Repositioning, skin care, range of motion exercises, and
24 transfers.

25 (7) Feeding and assurance of adequate fluid intake.

26 (8) Respiration.

27 (9) Assistance with self-administration of medications.

28 (d) Personal care services are available if these services are
29 provided in the beneficiary's home and other locations as may be
30 authorized by the director. Among the locations that may be
31 authorized by the director under this paragraph is the recipient's
32 place of employment if all of the following conditions are met:

33 (1) The personal care services are limited to those that are
34 currently authorized for a recipient in the recipient's home and
35 those services are to be utilized by the recipient at the recipient's
36 place of employment to enable the recipient to obtain, retain, or
37 return to work. Authorized services utilized by the recipient at the
38 recipient's place of employment shall be services that are relevant
39 and necessary in supporting and maintaining employment.
40 However, workplace services shall not be used to supplant any

1 reasonable accommodations required of an employer by the federal
2 Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.;
3 ADA) or other legal entitlements or third-party obligations.

4 (2) ~~The provision of personal care services at the recipient's~~
5 ~~place of employment shall be authorized only to the extent that~~
6 ~~the total hours utilized at the workplace are within the total personal~~
7 ~~care services hours authorized for the recipient in the home.~~
8 ~~Additional personal care services hours may not be authorized in~~
9 ~~connection with a recipient's employment.~~

10 (c) ~~Where supportive services are provided by a person having~~
11 ~~the legal duty pursuant to the Family Code to provide for the care~~
12 ~~of his or her child who is the recipient, the provider of supportive~~
13 ~~services shall receive remuneration for the services only when the~~
14 ~~provider leaves full-time employment or is prevented from~~
15 ~~obtaining full-time employment because no other suitable provider~~
16 ~~is available and where the inability of the provider to provide~~
17 ~~supportive services may result in inappropriate placement or~~
18 ~~inadequate care.~~

19 These providers shall be paid only for the following:

20 (1) ~~Services related to domestic services.~~

21 (2) ~~Personal care services.~~

22 (3) ~~Accompaniment by a provider when needed during necessary~~
23 ~~travel to health-related appointments or to alternative resource~~
24 ~~sites.~~

25 (4) ~~Protective supervision only as needed because of the~~
26 ~~functional limitations of the child.~~

27 (5) ~~Paramedical services.~~

28 (f) ~~To encourage maximum voluntary services, so as to reduce~~
29 ~~governmental costs, respite care shall also be provided. Respite~~
30 ~~care is temporary or periodic service for eligible recipients to~~
31 ~~relieve persons who are providing care without compensation.~~

32 (g) ~~A person who is eligible to receive a service or services~~
33 ~~under an approved federal waiver authorized pursuant to Section~~
34 ~~14132.951, or a person who is eligible to receive a service or~~
35 ~~services authorized pursuant to Section 14132.95, shall not be~~
36 ~~eligible to receive the same service or services pursuant to this~~
37 ~~article. In the event that the waiver authorized pursuant to Section~~
38 ~~14132.951, as approved by the federal government, does not extend~~
39 ~~eligibility to all persons otherwise eligible for services under this~~
40 ~~article, or does not cover a service or particular services, or does~~

1 not cover the scope of a service that a person would otherwise be
2 eligible to receive under this article, those persons who are not
3 eligible for services, or for a particular service under the waiver
4 or Section 14132.95 shall be eligible for services under this article.

5 (h) (1) All services provided pursuant to this article shall be
6 equal in amount, scope, and duration to the same services provided
7 pursuant to Section 14132.95, including any adjustments that may
8 be made to those services pursuant to subdivision (c) of Section
9 14132.95.

10 (2) Notwithstanding any other provision of this article, the rate
11 of reimbursement for in-home supportive services provided through
12 any mode of service shall not exceed the rate of reimbursement
13 established under subdivision (j) of Section 14132.95 for the same
14 mode of service unless otherwise provided in the annual Budget
15 Act.

16 (3) The maximum number of hours available under Section
17 14132.95, Section 14132.951, and this section, combined, shall
18 be 283 hours per month. Any recipient of services under this article
19 shall receive no more than the applicable maximum specified in
20 Section 12303.4.

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Date of Hearing: May 10, 2011

ASSEMBLY COMMITTEE ON HUMAN SERVICES
Jim Beall Jr., Chair
AB 876 (Valadao) - As Amended: March 31, 2011

SUBJECT : In-Home Supportive Services Program

SUMMARY : Prohibits an In-Home Supportive Services (IHSS) program provider applicant who has been convicted of specified disqualifying offenses from signing a waiver on behalf of a service recipient as the recipient's authorized representative, enabling the recipient to employ that applicant.

EXISTING LAW

- 1) Establishes the IHSS program to provide personal services and home care for approximately 435,000 eligible poor, aged, blind and disabled individuals by approximately 360,000 providers throughout the state to enable recipients to remain in their own homes and avoid institutionalization.
- 2) Prohibits, under Welfare & Institutions (W&I) Code Section 12305.81, a person from providing supportive services under the IHSS program for 10 years following a conviction for crimes involving:
 - a) Fraud against a government health care or supportive services program; or,
 - b) Child endangerment, pursuant to Penal Code (PC) Section 273a, elder or dependent adult abuse, pursuant to PC Section 368, or similar violations in another jurisdiction.
- 3) Prohibits new provider applicants from providing supportive services under the IHSS program for 10 years following a conviction for any of the following:
 - a) A violent or serious felony as defined in PC Sections 667.5 and 1192.7;
 - b) A felony for which registration is required under the Sex Offender Registration Act, pursuant to PC Section 290;

- c) Obtaining public benefits or services by fraud when the amount of aid exceeds \$950, pursuant to W&I Code Section 10980(c)(2), or fraud in the use of food stamp (CalFresh) benefits in excess of \$950, pursuant to W&I Code Section 10980(g)(2).
- 4) Provides that the prohibitions described in paragraph 3), above, do not apply if the applicant has obtained a certificate of rehabilitation as provided in PC Section 4852.01 et seq., or if the conviction has been expunged, pursuant to PC Section 1203.4.
- 5) Permits a recipient of IHSS services who wishes to hire a provider applicant who has been convicted of an offense described in paragraph 3), above, to submit an individual waiver of the exclusion, signed by the recipient or the recipient's authorized representative, if applicable.
- 6) Authorizes an applicant convicted of an offense described in paragraph 3), above, to seek from the Department of Social Services (DSS) a general exception to the exclusions and sets out the procedures to be followed and factors to be considered by DSS in responding to a request for a general exception.
- 7) Requires the county to notify a recipient who wishes to hire a provider who has been convicted of an offense described in paragraph 3), above, of the criminal convictions and requires the notice to include the following:
 - a) An explanation of the exclusions described in paragraph 3), above, as well as the waiver process and the process for an applicant to seek a general exception; and,
 - b) A waiver form.

FISCAL EFFECT : Unknown

COMMENTS :

Background

The 2009 IHSS budget trailer bill, ABX4 19 (Evans), Chapter 17, Statutes of 2009 4th Extraordinary Session, included provisions intended to prevent fraud in, and enhance the integrity of the IHSS program. As a condition of being placed or maintained on a county's IHSS provider registry, ABX4 19 required criminal

background checks to be completed for all prospective IHSS providers as of October 1, 2009, and to be completed by July 2, 2010 for anyone already a provider on October 1, 2009.

Under existing California law, consistent with federal Medicaid law, an individual may not serve as a provider of services under the IHSS program for 10 years following a conviction for specified crimes involving fraud against a government health care or supportive services program, child endangerment, or elder or dependent adult abuse. (These are commonly referred to as "Tier 1" offenses.) The 2010 human services budget trailer bill, AB 1612 (Committee on Budget), Chapter 725, Statutes of 2010, provided for the additional exclusion, with certain exceptions, of provider applicants for 10 years following a conviction for a violent or serious felony, as defined in the Penal Code, and other specified felony offenses. These exclusions, referred to as "Tier 2" offenses, apply prospectively, to new provider applicants, beginning 90 days following the effective date of that bill.

With respect to these added, Tier 2, exclusions, AB 1612 provides that a recipient who wishes to employ a provider applicant who has been convicted of such an offense "may submit to the county an individual waiver of the exclusion." The waiver form must be signed "by the recipient or by the recipient's authorized representative , if applicable ?." In signing a waiver, the individual agrees that he or she is "accepting the responsibility for this decision and the risk of any potential actions that may occur as a result of this decision." This bill would add the proviso that "Ÿa] provider applicant shall not sign his or her own individual waiver form as the recipient's authorized representative."

The AB 1612 exclusion for prior convictions of Tier 2 offenses was enacted as part of a larger budget compromise, and was not vetted through legislative policy committees. The provision of AB 1612 permitting an authorized representative to sign a waiver on behalf of a recipient to enable them to personally provide IHSS services does give the appearance of a conflict of interest. What this provision does, in effect, however, is to simply create a de facto exception to the Tier 2 exclusions for parents of minors and other authorized representatives. This bill would eliminate that exception.

Need for this bill : According to the author, "Ÿm]ost ŸIHSS]

recipients do not have the physical stature or ability to advocate for themselves hence their need for supportive services. ? Why would the State of California allow someone who has possibly committed murder or voluntary manslaughter sign their own rights to take care of an incapacitated person? ÝThis bill] will guarantee that our recipients are not put in an abusive situation which is being paid for by our state government."

Based on data on the percentage of IHSS recipients whose mail is addressed to someone other than the recipient (i.e., an authorized representative), and the percentage of providers with Tier 2 convictions, the author estimates that there are approximately 600 authorized representative providers who could potentially sign their own waivers.

Who are "authorized representatives"? : Existing law permits a provider applicant to sign the waiver form if the applicant is also the recipient's authorized representative. To understand the effect of this bill, therefore, it is necessary to understand who can be an "authorized representative." The term is not defined in the statutes or regulations governing the IHSS program.

Authorized representative is defined elsewhere in the W&I Code-with respect to fair hearings under the Lanterman Developmental Disabilities Services Act. In that context, authorized representative means "the conservator of an adult, the guardian, conservator, or parent or person having legal custody of a minor claimant, or a person or agency appointed pursuant to Ýprocedures under the act]." W&I Code Section 4701.6.

By common usage, an authorized representative is an individual authorized by law (e.g., the parent or guardian of a minor), or designated either by the individual (e.g., through a power of attorney, advance health care directive, contract) or by an entity with authority to appoint someone to act on behalf of the individual (e.g., a court-appointed conservator). In the health care context, legally recognized surrogate decision-makers include spouses and registered domestic partners, and may also include immediate family members, relatives, significant others, and close friends.

Effect of this bill : Under this bill, authorized representatives of recipients who lack capacity to sign a waiver

would be unable to sign the waiver to provide IHSS services themselves based on a Tier 2 felony conviction within the prior 10 years. As authorized representatives, however, they could still sign a waiver authorizing someone else who has a Tier 2 felony conviction to be a provider for their own child, relative, etc. Thus, this bill would narrow the waiver exception to the Tier 2 felony exclusion by disqualifying authorized representatives—that is, those who would likely be the most appropriate providers: Parents or guardians of minor children; parents of adults, siblings, spouses, registered domestic partners, or adult children—including those who have been court-appointed as conservators; and trusted friends or relatives selected by an IHSS recipient prior to becoming incapacitated to act as his or her health care agent. Parents and other authorized representatives would have the greatest obstacles to becoming an IHSS provider and would have to go through the far more cumbersome and lengthy state-level general exemption process, where the outcome is far more uncertain.

If the purpose of this bill is to narrow the universe of people with prior felony convictions who can serve as IHSS providers, it seems it is doing so by excluding the wrong sub-group: authorized representatives. The author's stated goal is to ensure that "our recipients are not put in an abusive situation which is being paid for by our state government." It is not likely that this goal will be furthered by, for example, disqualifying a parent who is also a child's only authorized representative from being the child's provider because of a prior Tier 2 felony conviction, in favor of a stranger—who may also have a prior Tier 2 felony conviction.

Concerns : The California Association of Public Authorities for IHSS (CAPA) is concerned that, by requiring parents and other authorized representatives to go through the state general exemption process, services would be delayed. CAPA points out that the data on Tier 2 offenses suggest that very few applicant providers have been determined ineligible based on conviction for such crimes; therefore, the issue addressed by this bill is not a significant one warranting the potential disruption of services to eligible recipients. DSS data do, in fact, show that, since the effective date of AB 1612 in February 2011, to date, only 162 new provider applicants statewide (out of, perhaps, 30,000 applicants<1>) have been deemed ineligible based on Tier 2 offenses, and only 68 waivers have been submitted. As CAPA notes, the data "dispels the myth ? that the IHSS program is rampant with dangerous felons working as providers for

seniors and people with disabilities." The data also show that the issue addressed by this bill is insignificant in terms of the number of people affected, since only a small (albeit unknown) fraction of the 68 waivers submitted were likely signed by an authorized representative seeking to be a provider.

The author of this bill poses the question of why the state would "allow someone who has possibly committed murder or voluntary manslaughter to sign their own rights to take care of an incapacitated person." The fact is that, with or without enactment of this bill, individuals convicted of Tier 2 disqualifying offenses are permitted to provide IHSS services. The Tier 2 exclusions do not apply to providers enrolled prior to 90 days after the effective date of AB 1612. They do not apply to individuals with convictions more than 10 years old. And, they do not apply when an IHSS recipient or his or her authorized representative signs a waiver. One might pose the alternative question of why a young child, an elderly parent, or a disabled adult, for example, should have to receive IHSS services from a stranger rather than from a willing and able authorized representative who is also their parent, adult child, or spouse.

RECOMMENDED AMENDMENT : The author is reportedly willing to accept the following amendment:

A_ Except for the parent, guardian or person having legal custody of a minor, the conservator of an adult, or a spouse or registered domestic partner, a provider applicant shall not sign his or her own individual waiver form as the recipient's authorized representative.

REGISTERED SUPPORT / OPPOSITION :

Support

<1> CAPA reports that there is a turnover of roughly one-third of the IHSS provider pool each year. Assuming a turnover of 120,000 providers a year, or 10,000 per month, there would have been approximately 30,000 new provider applicants subject to the Tier 2 exclusions since February 1, 2011, the effective date of AB 1612.

1 Individual

Opposition

Disability Rights California (unless amended)

Analysis Prepared by : Eric Gelber / HUM. S. / (916) 319-2089

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Assembly Bill 533- Aging and independent living services

SUMMARY: Existing law designates area agencies on aging (AAA) as local units on aging in California, which are financially supported by a variety of sources, including federal funding, state and local government assistance, the private sector, and individual contributions. This bill would continuously appropriate, from the Federal Trust Fund, in the absence of enactment of the annual Budget Act by July 1 of a fiscal year, to (1) the California Department of Aging, the amount of federal funds contained in the Federal Trust Fund necessary to pay area agencies on aging for the administration of programs under their jurisdiction; and (2) the Department of Rehabilitation, the amount of federal funds contained in the Federal Trust Fund necessary to pay independent living centers (ILCs) for the administration of programs under their jurisdiction, pending enactment of the Budget Act.

BACKGROUND: AAAs and ILCs are important components of California's system of home and community-based long-term care services. They support and enable an individual's ability to remain independent, contributing members of their communities by administering or overseeing a range of programs and services for people living with disabilities. Many of these programs exist because of partnerships, obligations and funding commitments from both the federal and state government, as well as local governments. Since a significant portion of these services' funding comes from the federal government, those funds must pass through the state. The state receives the funds from the federal government and deposits them into the Federal Trust Fund, then distributes the resources to the appropriate local agencies via the annual state budget act.

ANALYSIS/DISCUSSION: AB 533 creates a pass-through mechanism enabling a continuous appropriation of federal funds appropriated to the State of California for the purposes of supporting ILCs and AAAs. Specifically data for the past 30 years, from 1979-80 through 2009-10, indicate that the state budget has passed prior to July 1st, 12 of the 30 years. Because the programs addressed by this bill operate with very small margins, administrators must pursue lines of credit during a budget crisis and are not reimbursed for related expenses, such as fees and interest. In addition, some of the local programs' credit records suffer as a result of these emergency loans.

California has 33 AAAs which provide services that are essential to the health and well-being of older adults, California also has 29 ILCs which provide services to people with disabilities enabling them to remain in their own homes and communities.

AB 533 is supported by AARP, Congress of California Seniors (CCS) and National Association of Social Workers, California Chapter (NASW-CA).

COUNCIL STRATEGIC PLAN OBJECTIVE: Support public policies that positively impact the lives of persons with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: On April 21, 2011, the legislative and Public Policy committee took action to support AB 533 with amendments to the Department of Developmental Services.

LPPC RECOMMENDATION(S): Support AB 533 with amendments to include the Department of Developmental Services.

ATTACHMENT(S): AB 533 and Assembly Committee on Appropriations analysis.

PREPARED: Karim Alipourfard, May 11, 2011

ASSEMBLY BILL

No. 533

Introduced by Assembly Member Yamada

February 15, 2011

An act to add Division 11 (commencing with Section 19900) to the Welfare and Institutions Code, relating to social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 533, as introduced, Yamada. Area agencies on aging: independent living centers: funding.

Existing law designates area agencies on aging as local units on aging in California, which are financially supported by a variety of sources, including federal funding, state and local government assistance, the private sector, and individual contributions.

Existing law also provides for independent living centers, for the purpose of assisting individuals with disabilities in their attempts to live fuller and freer lives outside institutions, and achieve social and economic independence.

This bill would continuously appropriate from the Federal Trust Fund, in the absence of enactment of the annual Budget Act by July 1 of a fiscal year, (1) to the California Department of Aging, the amount of federal funds contained in the Federal Trust Fund necessary to pay area agencies on aging for the administration of programs under their jurisdiction, and (2) to the Department of Rehabilitation, the amount of federal funds contained in the Federal Trust Fund necessary to pay independent living centers for the administration of programs under their jurisdiction, pending enactment of the Budget Act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Division 11 (commencing with Section 19900)
2 is added to the Welfare and Institutions Code, to read:

3
4 DIVISION 11. FUNDING FOR SERVICES FOR SENIORS
5 AND PERSONS WITH DISABILITIES
6

7 19900. (a) Notwithstanding Section 13340 of the Government
8 Code, in any fiscal year in which the Budget Act is not enacted by
9 July 1 of that fiscal year, there is hereby continuously appropriated
10 from the Federal Trust Fund the following sums:

11 (1) To the California Department of Aging the amount of federal
12 funds contained in the Federal Trust Fund necessary to pay area
13 agencies on aging for the administration of programs under their
14 jurisdiction, as provided in Division 8.5 (commencing with Section
15 9000). The Department of Finance, upon enactment of the Budget
16 Act and in the absence of this action being taken by the Legislature
17 or the Governor in that Budget Act, may reduce the applicable
18 Budget Act allocations by the amount of any payments made
19 pursuant to this paragraph.

20 (2) To the Department of Rehabilitation the amount of federal
21 funds contained in the Federal Trust Fund necessary to pay
22 independent living centers for the administration of programs under
23 their jurisdiction, as provided in Chapter 9 (commencing with
24 Section 19800) of Division 10. The Department of Finance, upon
25 enactment of the Budget Act and in the absence of this action being
26 taken by the Legislature or the Governor in that Budget Act, may
27 reduce the applicable Budget Act allocations by the amount of any
28 payments made pursuant to this paragraph.

29 (b) If payments are made to area agencies on aging or
30 independent living centers pursuant to this section, the first
31 payment shall be made on July 15, with payments to be made on
32 the 15th of each month thereafter, until the enactment of the Budget
33 Act.

1 SEC. 2. This act is an urgency statute necessary for the
2 immediate preservation of the public peace, health, or safety within
3 the meaning of Article IV of the Constitution and shall go into
4 immediate effect. The facts constituting the necessity are:

5 In order to ensure that area agencies on aging and independent
6 living centers will be able to prevent interruptions in important
7 services provided to elderly persons and persons with disabilities
8 if the Budget Act of 2011 is not enacted in a timely manner, it is
9 necessary that this act take effect immediately.

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BILL ANALYSIS

AB 533
Page 1

Date of Hearing: May 11, 2011

ASSEMBLY COMMITTEE ON APPROPRIATIONS Felipe Fuentes, Chair

AB 533 (Yamada) - As Introduced: February 15, 2011

Policy Committee:	Aging and Long
Term Care Vote:	6 - 0
Human Services	6 - 0

Urgency: No State Mandated Local Program:
No Reimbursable:

SUMMARY

This bill establishes a continuous appropriation from the Federal Trust Fund for two programs serving the elderly and disabled when the state budget has not been enacted by July 1. Specifically, this bill:

- 1) Establishes a continuous appropriation to the California Department of Aging (CDA) for the Area Agencies on Aging (AAAs) and to the California Department of Rehabilitation (DOR) for the Independent Living Centers (ILCs).
- 2) Authorizes the Department of Finance to reduce the applicable Budget Act allocations by the amount paid out pursuant to this bill.

FISCAL EFFECT

The proposed continuous appropriation of Federal Trust Funds to CDA and DOR in the absence of an enacted state budget is contrary to the general policy of this Committee to avoid continuous appropriations. More than \$500 million in Federal Trust Funds per year are disbursed for these two departments combined.

COMMENTS

- 1) Rationale . This bill would create a continuous appropriation for CDA and DOR if the state budget is not enacted by July 1.

The proposed 2011-12 budget includes \$152.4 million in Federal Trust Funds (\$182 million all funds) for the CDA. The proposed

2011-12 budget includes approximately \$348.4 million in Federal Trust Funds (\$416 million all funds) for DOR.

2)Background . CDA administers the federal Older Americans Act and 33 AAAs statewide serve as local administrators of an array of services to elderly Californians. DOR assists Californians with disabilities to obtain and retain employment and maximize their ability to live independently in their communities. DOR also provides technical assistance and training and via 29 ILCs statewide.

3)Prior Legislation . In recent years, numerous bills have sought to authorize or require continuous appropriations for specific programs or departments during periods of budget impasse. All of the following measures were held on this committee's Suspense File:

- a) AB 256 (Huff) of 2007, AB 697 Oropeza of 2005, and AB 1443 (Murray) of 2003, to continuously appropriate all fuel tax revenue for transportation purposes.
- b) AB 322 (Anderson) of 2007 and AB 1928 (Berg) in 2006, to continuously appropriate federal funds to the Departments of Aging and Rehabilitation to support specific activities.
- c) AB 1125 (Hernández) of 2009, AB 1523 (Soto) of 2007, AB 742 (Jones) of 2005, and AB 1535 (Bermudez) of 2003, to continuously appropriate funds to pay all state employee salaries and benefits.
- d) AB 1604 (Saldana) of 2005 to continuously appropriate GF to support the California Community College system.
- e) AB 273 (Bogh) of 2003 to continuously appropriate GF to pay state peace officers' salaries.

AB 1699 (Hernández) of 2010, which continuously appropriate funds to pay all state employee salaries and benefits, passed this committee, but was subsequently amended to become an urgency measure and failed in the Senate.

Analysis Prepared by : Julie Salley-Gray / APPR. / (916) 319-2091

COUNCIL AGENDA ITEM DETAIL SHEET

BILL NUMBER/ISSUE: Senate Bill (SB) 462- special education advocates

BILL SUMMARY: This bill would require special education local plan areas (SELPA), in collaboration with the Department of Education, to develop a voluntary special education advocate certification program.

Once a parent/representative files for a due process hearing, they would be immediately be provided with a list of persons and organization within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the hearing. The list will be maintained by the Office of Administrative Hearings. In order for persons to be placed on the list, individuals will be required to attend alternative dispute resolution (ADR) training provided by the SELPA and take a test for certification provided by the Office of Administrative Hearings.

In addition, the bill requires significant information to be disclosed by individuals seeking certification regarding their background, specialty and how many cases they have prevailed on.

BACKGROUND: Although this bill would require training and certification for individuals who want to be put on the list, there are significant concerns with that training since there is no requirement for special education training. In addition, the training would be provided by the local SELPA (or an agency selected by the SELPA thereby introducing a bias against families.

ANALYSIS/DISCUSSION: The negative aspects far outweigh any positive ones that may occur by offering training and certification list. By creating a possible training bias the SELPA may gain an advantage in the process by training individuals with materials or curriculum that is not required to be disclosed or in accordance with any format. In addition, a conflict may occur when one of the parties in dispute has provided training to the individual(s) assisting the opposing party.

COUNCIL STRATEGIC PLAN OBJECTIVE: Shape public policy that positively impacts Californians with developmental disabilities and their families.

PRIOR COMMITTEE ACTIVITY: The Legislative and Public Policy Committee met on April 21, 2011 and took action to recommend that the Council oppose this bill.

LPPC RECOMMENDATION(S): Oppose SB 462

ATTACHMENT(S): SB 462 and Senate committee on Education analysis

PREPARED: Melissa C. Corral - April 29, 2011

AMENDED IN SENATE APRIL 25, 2011
AMENDED IN SENATE MARCH 25, 2011

SENATE BILL

No. 462

Introduced by Senator Blakeslee

February 16, 2011

An act to amend Section 56502 of, and to add Chapter 4.2 (commencing with Section 56395) to Part 30 of Division 4 of Title 2 of, the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

SB 462, as amended, Blakeslee. Special education: special education advocates: certification.

Existing law requires local educational agencies to initiate, and individualized education program teams to conduct, meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs, as specified. Existing law also provides that it is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation in a nonadversarial atmosphere, which may not be attended by attorneys or other independent contractors used to provide legal advocacy services, prior to filing a request for a due process hearing. Existing law provides, however, that this does not preclude the parent or public agency from being accompanied and advised by nonattorney representatives in mediation conferences.

This bill would require special education local plan areas, collectively, and in collaboration with the State Department of Education, to develop a voluntary special education advocate certification program for persons who would participate, upon the invitation of a parent, as a member of a pupil's individualized education program team, or, upon the invitation

of a parent, in a mediation conference, as specified. The bill would require special education local plan areas to provide alternative dispute resolution training, and the Office of Administrative Hearings to administer a test, to persons seeking certification, as specified. The bill would also require the Office of Administrative Hearings to certify, and maintain a registry of, persons who have successfully passed the test and completed the training. The bill would require a certified special education advocate to disclose his or her relationship to the pupil or his or her parents, as specified. Because the bill would require local educational agencies to perform additional duties, the bill would impose a state-mandated local program.

Existing law provides that upon receipt by the Superintendent of Public Instruction of a written request for a due process hearing regarding a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child with exceptional needs, the provision of a free appropriate public education to the child, or the availability of a program appropriate for the child, including the question of financial responsibility, from the parent or guardian or public agency, the Superintendent or his or her designee or designees immediately shall notify, in writing, all parties and provide them with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. Existing law provides that the Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.

This bill would delete the provision providing that the Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list and instead provide that the Superintendent or his or her designee shall certify that the listed persons or organizations provide services for free or at a reduced cost.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 4.2 (commencing with Section 56395) is added to Part 30 of Division 4 of Title 2 of the Education Code, to read:

CHAPTER 4.2. SPECIAL EDUCATION ADVOCATES

56395. It is the intent of the Legislature to protect families of individuals with exceptional needs and to improve the relationship between special education advocates and school districts by providing a voluntary special *education* advocate certification program.

56395.1. For the purpose of this chapter:

(a) "Alternative dispute resolution" means nonadversarial techniques used to reduce conflict and to come to a mutually beneficial agreement.

(b) "Certified special education advocate" means any nonattorney person, paid or unpaid, who speaks, writes, or works on behalf of a pupil who qualifies as an individual with exceptional needs, as defined in Section 56026, and who has been certified pursuant to the provisions of this chapter.

56395.2. Special education local plan areas, in collaboration with the department, shall do all of the following:

(a) Collectively, and in consultation with the Office of Administrative Hearings, develop a voluntary special education advocate certification program that includes a test, which shall be administered by the Office of Administrative Hearings, to certify that the person has sufficient knowledge and understanding of the process for resolving special education disputes.

(b) Determine the yearly fee to be charged by a special education local plan area to a person seeking certification as a special education advocate that shall not exceed the reasonable costs of providing training pursuant to subdivision (c).

(c) Provide alternative dispute resolution training at least twice per year for persons seeking certification as a special education advocate. This training also may be offered by an entity approved by a special education local plan area. The training shall consist of all of the following:

(1) At least four hours of alternative dispute resolution training.

1 (2) Relevant ethics training.

2 (3) Review of relevant special education laws.

3 (d) Notify the Office of Administrative Hearings whether a
4 person seeking certification has completed the alternative dispute
5 resolution training.

6 56395.3. The Office of Administrative Hearings shall do all
7 of the following:

8 (a) Administer a test, either online or in person, to a person
9 seeking certification as a special education advocate. The test shall
10 be offered in the native language of the person seeking certification
11 as a special education advocate.

12 (b) Certify a person who has successfully passed the test
13 described in subdivision (a) and who has fulfilled the training
14 requirements listed in subdivision (c) of Section 56395.2.
15 Certification may be granted for a period not to exceed five years.

16 (c) Post a registry of certified special education advocates on
17 its Internet Web site consistent with subdivision (h) of Section
18 56502.

19 (d) Charge a fee to a person seeking certification as a special
20 education advocate that shall not exceed the reasonable costs of
21 administering the test pursuant to subdivision (a) and maintaining
22 the registry pursuant to subdivision (c).

23 56395.4. (a) A certified special education advocate shall do
24 all of the following:

25 (1) Upon the invitation of a parent, speak, write, or work on
26 behalf of a pupil who qualifies as an individual with exceptional
27 needs pursuant to paragraph (1) of subdivision (b) of Section
28 56341, or subdivision (b) of Section 56500.3.

29 (2) Register with the Office of Administrative Hearings and
30 renew their certification every five years. Registrants shall indicate
31 whether they are a paid or an unpaid advocate. If a person registers
32 as a paid advocate, and he or she is referred by an attorney, he or
33 she shall be required to report the identity of the person who
34 employs him or her.

35 (3) Have a report, available upon request by parents, special
36 education local plan area staff, a school district, or the department,
37 regarding the frequency of their advocacy activities, the subject
38 matter of the issues upon which he or she has worked, the fees, if
39 any, he or she has received for his or her advocacy, and the length
40 of time he or she took to resolve each case.

1 (4) Disclose at the beginning of a mediation session, in writing,
2 his or her relationship to the pupil or his or her parents and indicate
3 whether he or she is receiving payment of any kind for his or her
4 services.

5 (b) A certified special education advocate may not be reimbursed
6 ~~by parents, organizations, advocacy groups, or school districts for~~
7 ~~the certification fee imposed pursuant to subdivision~~ *reimbursed*
8 *by a parent, organization, advocacy group, or school district for*
9 *the certification fee imposed pursuant to subdivision* (b) of Section
10 56395.2 or subdivision (d) of Section 56395.3.

11 (c) *Nothing in this section shall be construed to allow fees and*
12 *costs awarded to a prevailing party pursuant to the federal*
13 *Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400*
14 *et seq.) to be awarded to a special education advocate.*

15 56395.5. (a) A parent, as defined in Section 56028, is not
16 required to be certified pursuant to the provisions of this chapter
17 in order to represent his or her child.

18 (b) A mediator, as described in subdivision (d) of Section
19 56500.3, shall require nonparent participants in a mediation session
20 to disclose their relationship to the pupil and their status as an
21 advocate.

22 SEC. 2. Section 56502 of the Education Code is amended to
23 read:

24 56502. (a) All requests for a due process hearing shall be filed
25 with the Superintendent in accordance with Section 300.508(a)
26 and (b) of Title 34 of the Code of Federal Regulations.

27 (b) The Superintendent shall develop a model form to assist
28 parents in filing a request for due process that is in accordance
29 with Section 300.509 of Title 34 of the Code of Federal
30 Regulations.

31 (c) (1) The party, or the attorney representing the party,
32 initiating a due process hearing by filing a written request with the
33 Superintendent shall provide the other party to the hearing with a
34 copy of the request at the same time as the request is filed with the
35 Superintendent. The due process hearing request notice shall
36 remain confidential. In accordance with Section 1415(b)(7)(A) of
37 Title 20 of the United States Code, the request shall include the
38 following:

1 (A) The name of the child, the address of the residence of the
2 child, or available contact information in the case of a homeless
3 child, and the name of the school the child is attending.

4 (B) In the case of a homeless child or youth within the meaning
5 of paragraph (2) of Section 725 of the federal McKinney-Vento
6 Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available
7 contact information for the child and the name of the school the
8 child is attending.

9 (C) A description of the nature of the problem of the child
10 relating to the proposed initiation or change, including facts relating
11 to the problem.

12 (D) A proposed resolution of the problem to the extent known
13 and available to the party at the time.

14 (2) A party may not have a due process hearing until the party,
15 or the attorney representing the party, files a request that meets
16 the requirements listed in this subdivision.

17 (d) (1) The due process hearing request notice required by
18 Section 1415(b)(7)(A) of Title 20 of the United States Code shall
19 be deemed to be sufficient unless the party receiving the notice
20 notifies the due process hearing officer and the other party in
21 writing that the receiving party believes the due process hearing
22 request notice has not met the notice requirements. The party
23 providing a hearing officer notification shall provide the
24 notification within 15 days of receiving the due process hearing
25 request notice. Within five days of receipt of the notification, the
26 hearing officer shall make a determination on the face of the notice
27 of whether the notification meets the requirements of Section
28 1415(b)(7)(A) of Title 20 of the United States Code, and shall
29 immediately notify the parties in writing of the determination.

30 (2) (A) The response to the due process hearing request notice
31 shall be made within 10 days of receiving the request notice in
32 accordance with Section 1415(c)(2)(B) of Title 20 of the United
33 States Code.

34 (B) In accordance with Section 300.508(e)(1) of Title 34 of the
35 Code of Federal Regulations, if the local educational agency has
36 not sent a prior written notice under Section 56500.4 and Section
37 300.503 of Title 34 of the Code of Federal Regulations to the parent
38 regarding the subject matter contained in the due process hearing
39 request of the parent, the response from the local educational
40 agency to the parent shall include all of the following:

1 (i) An explanation of why the agency proposed or refused to
2 take the action raised in the due process hearing request.

3 (ii) A description of other options that the individualized
4 education program team considered and the reasons why those
5 options were rejected.

6 (iii) A description of each assessment procedure, assessment,
7 record, or report the agency used as the basis for the proposed or
8 refused action.

9 (iv) A description of other factors that are relevant to the
10 proposed or refused action of the agency.

11 (C) A response by a local educational agency under
12 subparagraph (B) shall not be construed to preclude the local
13 educational agency from asserting that the due process request of
14 the parent was insufficient, where appropriate.

15 (D) Except as provided under subparagraph (B), the party
16 receiving a due process hearing request notice, within 10 days of
17 receiving the notice, shall send to the other party, in accordance
18 with Section 300.508(f) of Title 34 of the Code of Federal
19 Regulations, a response that specifically addresses the issues raised
20 in the due process hearing request notice.

21 (e) A party may amend a due process hearing request notice
22 only if the other party consents in writing to the amendment and
23 is given the opportunity to resolve the hearing issue through a
24 meeting held pursuant to Section 1415(f)(1)(B) of Title 20 of the
25 United States Code, or the due process hearing officer grants
26 permission, except that the hearing officer may only grant
27 permission at any time not later than five days before a due process
28 hearing occurs. The applicable timeline for a due process hearing
29 under this chapter shall recommence at the time the party files an
30 amended notice, including the timeline under Section 1415(f)(1)(B)
31 of Title 20 of the United States Code.

32 (f) The Superintendent shall take steps to ensure that within 45
33 days after receipt of the written hearing request the hearing is
34 immediately commenced and completed, including, any mediation
35 requested at any point during the hearing process pursuant to
36 paragraph (2) of subdivision (b) of Section 56501, and a final
37 administrative decision is rendered, unless a continuance has been
38 granted pursuant to Section 56505.

39 (g) Notwithstanding any procedure set forth in this chapter, a
40 public agency and a parent, if the party initiating the hearing so

1 chooses, may meet informally to resolve an issue or issues relating
2 to the identification, assessment, or education and placement of
3 the child, or the provision of a free appropriate public education
4 to the child, to the satisfaction of both parties prior to the hearing.
5 The informal meeting shall be conducted by the district
6 superintendent, county superintendent, or director of the public
7 agency or his or her designee. A designee appointed pursuant to
8 this subdivision shall have the authority to resolve the issue or
9 issues.

10 (h) Upon receipt by the Superintendent of a written request by
11 the parent or public agency, the Superintendent or his or her
12 designee or designees immediately shall notify, in writing, all
13 parties of the request for the hearing and the scheduled date for
14 the hearing. The notice shall advise all parties of all their rights
15 relating to procedural safeguards. The Superintendent or his or her
16 designee shall provide both parties with a list of persons and
17 organizations within the geographical area that can provide free
18 or reduced cost representation or other assistance in preparing for
19 the due process hearing. This list shall include a brief description
20 of the requirement to qualify for the services. The Superintendent
21 or his or her designee shall certify that the listed persons or
22 organizations provide services for free or at a reduced cost.

23 (i) In accordance with Section 1415(f)(3)(B) of Title 20 of the
24 United States Code, the party requesting the due process hearing
25 shall not be allowed to raise issues at the due process hearing that
26 were not raised in the notice filed under this section, unless the
27 other party agrees otherwise.

28 SEC. 3. If the Commission on State Mandates determines that
29 this act contains costs mandated by the state, reimbursement to
30 local agencies and school districts for those costs shall be made
31 pursuant to Part 7 (commencing with Section 17500) of Division
32 4 of Title 2 of the Government Code.

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BILL ANALYSIS

SENATE COMMITTEE ON EDUCATION
 Alan Lowenthal, Chair
 2011-2012 Regular Session

BILL NO: SB 462
 AUTHOR: Blakeslee
 AMENDED: April 25, 2011
 FISCAL COMM: Yes HEARING DATE: April 27, 2011
 URGENCY: No CONSULTANT: Lynn Lorber

SUBJECT : Special Education Advocates: Certification.

SUMMARY

This bill establishes a voluntary training and certification program for special education advocates; and, requires certified advocates to disclose specific information during a mediation session or upon request by various parties to a special education complaint.

BACKGROUND

Federal and state laws:

- 1) Provide both pupils with exceptional needs and their parents with specific rights, also known as procedural safeguards. These rights include a request for a due process hearing, request for mediation before or after requesting a due process hearing, or request alternative dispute resolution. Statutes do not require mediation or alternative dispute resolution prior to a due process hearing. Mediation and alternative dispute resolution are voluntary, informal and do not include attorneys. (20 USC 1415 et seq., 34 CFR 300.500 et seq., Education Code § 56500 et seq.)
- 2) Require the local education agency to convene a resolution meeting within 15 days of receiving notice of a request for a due process hearing. Attorneys for the local educational agency are prohibited from attending unless the parent is accompanied by an attorney. (20 USC 1415, 34 CFR 300.510, and EC § 56501.5)

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- 3) Authorize public agencies to establish procedures to offer parents and schools that choose not to use mediation, an opportunity to meet with a disinterested party as follows:
 - a) Who is under contact with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center established pursuant to federal law.
 - b) Who would explain the benefits of, and encourage the use of, the mediation process to parents. (34 CFR 300.506(b)(2) and EC § 56500.3)

State law states legislative intent that parties to special education disputes be encouraged to seek resolution through mediation prior to filing a request for a due process

hearing, and prohibits attorneys or other independent contractors used to provide legal advocacy services from attending or otherwise participating in the pre-hearing mediation conferences. However, parents and public agencies are not precluded from being accompanied and advised by non-attorney representatives and consulting with an attorney prior to or following a mediation conference. (EC § 56500.3)

Twenty special education local plan areas (SELPAs) receive federal special education funds to develop and test procedures, materials, and training to support alternative dispute resolution. Each of these SELPAs receives \$15,000 annually.

Current federal and state law require a pupil's individualized education program (IEP) to be developed, reviewed or revised by the pupil's IEP team. The team must include:

- a) The pupil's parents, a representative selected by the parent, or both.
- b) At least one regular education teacher of

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the pupil if participating in the regular education environment.

- c) At least one special education teacher or provider of the pupil.
- d) A representative of the local educational agency who meets specified qualifications.
- e) At the discretion of the parent or local educational agency, other individuals who have knowledge or special expertise regarding the pupil.
- f) When appropriate, the pupil with exceptional needs.
- g) For pupils with a specific learning disability, a person qualified to conduct individual diagnostic exams of children.
- h) When appropriate, the infant/toddler service coordinator.
(20 USC 1400 et seq. and EC 56341)

ANALYSIS

This bill establishes a voluntary training and certification program for special education advocates and requires certified advocates to disclose specific information during a mediation session or upon request by various parties to a special education complaint. Specifically, this bill:

- 1) Requires special education local plan areas (SELPAs), in collaboration with the California Department of Education, to do all of the following:
 - a) Collectively, and in consultation

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with the Office of Administrative Hearings (OAH), to develop a voluntary special education advocate certification program that includes a test to certify that the person has sufficient knowledge and understanding of the process for resolving special education disputes. OAH is to administer this test to advocates seeking certification.

b) Determine the fee to be charged by a SELPA to a person seeking certification, not to exceed the reasonable cost of providing training.

c) Provide alternative dispute resolution training at least twice per year. This training may be offered by an entity approved by a SELPA. The training must include all of the following:

- i) At least four hours of training in alternative dispute resolution.
- ii) Relevant ethics training.
- iii) Review of relevant special education laws.

d) Notify OAH whether a person seeking certification has completed the training.

2) Requires OAH to do all of the following:

a) Administer a test, either online or in person, to a person seeking certification as a special education advocate. The test must be offered in the native language of the person seeking certification.

b) Certify a person who has successfully passed the test and who has fulfilled the training requirements. The validity of certification is limited for a period of five years.

c) Post a registry of certified special education advocates on its website.

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d) Charge a fee to a person seeking certification that does not exceed the reasonable costs of administering the test and maintaining the registry on its website.

3) Requires a certified special education advocate to do all of the following:

a) Speak, write, or work on behalf of a pupil who qualifies as an individual with exceptional needs.

b) Register with the OAH and renew certification every five years.

c) Indicate when registering whether the person is paid or unpaid to serve as an

advocate.

d) If registering as a paid advocate and is referred by an attorney, report the identity of the person who employs him or her.

e) Have a report regarding the frequency of the person's advocacy activities, the subject matter of the issues upon which he or she has worked, any fees received for advocacy, and the length of time he or she took to resolve each case. This report must be available upon request by parents, SELPAs, school district of the California Department of Education.

f) Disclose in writing at the beginning of a mediation session, the relationship to the pupil or parents and indicate whether he or she is receiving payment of any kind for the advocacy services.

- 4) Prohibits a certified special education advocate from being reimbursed by a parent, organization, advocacy group, or school district for the fees for training and certification.
- 5) Prohibits this bill from being construed to allow fees

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and costs awarded to a prevailing party, pursuant to federal law, to be awarded to a special education advocate.

- 6) Provides that a parent is not required to be certified in order to represent his or her child.
- 7) Requires a mediator to require non-parent participants in a mediation session (prior to a due process hearing) to disclose the relationship to the pupil and the person's status as an advocate.
- 8) Requires the Superintendent of Public Instruction (SPI) to certify that the list currently compiled of people and organizations that can provide free or reduced cost representation or other assistance in preparing for a due process hearing, actually provide services for free or at a reduced cost. This bill also deletes the complete discretion of the SPI to determine which individuals or groups will be included on the list.
- 9) Defines "certified special education advocate" as any non-attorney, paid or unpaid, who speaks, writes, or works on behalf of a pupil who qualifies as an individual with exceptional needs and who has been certified pursuant to this bill.

STAFF COMMENTS

- 1) Purpose of the bill . According to the author, "The purpose of this bill is to protect families against predatory advocates while reducing administrative and legal costs borne by school districts resulting from disputes and litigation over the adequacy and administration of special education Individual Education Programs (IEPs). Currently, many parents of children with special needs are being taken advantage of by advocates pushing them to engage their school or school district into due process litigation. This incurs great cost to both the parents and the school district. This bill would make sure that individuals who claim to be 'advocates' have adequate training in alternative dispute resolution and are familiar with

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the legal and fiscal implications of due process litigation."

- 2) Good Housekeeping Seal of Approval . The certification process established by this bill is voluntary. Advocates who chose not to become certified may continue to advocate and are not required to meet any requirements of this bill, such as training or disclosure of certain information. A certified advocate could be considered by parents or others to be of a higher quality or the only advocates permitted to assist with special education disputes.
- 3) Existing advocates . This bill requires every person who seeks certification to receive training, pass a test, and be recertified every five years. Is it reasonable to allow a person who currently serves as an advocate to take the test without first receiving training for initial certification?
- 4) Applicability . This bill applies to advocates who may provide assistance during individualized education program (IEP) team meetings and mediation. This bill requires a certified special education advocate to disclose certain information at the beginning of a mediation session but does not clearly require this information to be disclosed at the beginning of an IEP team meeting. Staff recommends an amendment to make this clarifying change (page 5, line 1).
- 5) Paid or unpaid . This bill requires a certified special education advocate to indicate whether he or she is paid or unpaid, and the identity of the employer if the advocate is paid and referred by an attorney, each time the advocate registers with the Office of Administrative Hearings (upon initial certification and every five years thereafter). Should an advocate who is receiving payment for his or her advocacy be required to disclose the identity of the employer whether or not the advocate was referred by an attorney?
- 6) Training . This bill requires special education local plan areas (SELPAs) to provide alternative dispute

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resolution training for people seeking to become a certified special education advocate. The OAH currently provides training for its mediators and may have greater capacity to provide alternative dispute resolution training. Staff recommends an amendment to delete the requirement that SELPAs provide training and instead authorize SELPAs and OAH to offer the training or contract for the provision of training. This would allow individuals seeking certification to receive training from another public or private provider, yet still be eligible to take the certification test.

- 7) Recertification . This bill requires a certified special education advocate to renew his or her

registration with OAH every five years. This bill appears to require an advocate to receive the training and take the test prior to renewal of certification. Would it be more reasonable to require the advocate to take the test but without the requirement to also receive training?

- 8) List of certified advocates . This bill requires OAH to post a registry of certified advocates on its website consistent with current law relative to a list of people or organizations that provide free or reduced cost representation or assistance with due process hearings. This bill also requires the Superintendent of Public Instruction (SPI) to certify that the people and organizations on the list provide services for free at a reduced cost. This implies that the SPI will be required to certify that certified special education advocates are either unpaid or paid a low fee prior to those advocates being listed on OAH's website.

This bill does not clearly require the SPI to include certified special education advocates that are unpaid or paid a low fee on the SPI's list, which appears to relate to representation or assistance with due process hearings. Staff recommend amendments to clarify whether certified special education advocates are to be included on the SPI's list, whether the SPI's list is to be broadened to include other

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advocates for mediation and IEP team meetings, and reinstate current provisions that give the SPI complete discretion over which individuals and organizations are included on the list (page 8, lines 16-19).

- 9) Technical amendment . This bill provides that a certified special education advocate may not be reimbursed for any training or certification fees. Staff recommends an amendment to more specifically prohibit a certified advocate from being reimbursed for these fees (page 5, line 5).

- 10) Prior legislation . AB 1517 (Berryhill, 2009) would have required the California Department of Education (CDE) to establish and administer grants to establish alternative dispute resolution programs for special education. AB 1517 was held on the Assembly Appropriations Committee's suspense file.

SUPPORT

San Luis Obispo County Office of Education

OPPOSITION

Disability Rights California

AGENDA ITEM DETAIL SHEET

ISSUE: State Budget May Revision

BACKGROUND: According to DDS, “due to continuing and significant pressure on the GF, the Department’s budget for FY 2011-12 was decreased by \$576.9 million GF, in addition to other reductions achieved through statewide budget items (e.g. state workforce reductions). Most of the changes necessary to achieve the savings have been identified and adopted by the Legislature. The reductions made to the Department’s budget, totaling \$402.9 million GF, will be achieved through continuation of the 4.25 percent payment reduction for regional center operations and purchase of services, additional federal and other alternative funding, administrative cost limits for regional centers and service providers, enhanced auditing, third-party collections and accountability measures, reduced funding for developmental centers, reduced funding for the Prevention Program primarily serving infants and toddlers at risk of a developmental disability, and additional regional center operations reductions.

In addition to reductions in community services, the developmental center budget has continued to decline through closure of state-operated facilities, living unit consolidations, delays in infrastructure repairs, and through cost saving personnel initiatives. In the FY 2011-12 budget, the developmental centers budget was decreased through additional residence consolidations; staffing reductions; delay in infrastructure repairs; additional federal funding; an unallocated reduction; and statewide budget items such as hiring freezes, furloughs, and wage reductions. The Department’s headquarters budget has also decreased significantly over the last several years and for the FY 2011-12 budget is impacted by the statewide budget items referenced previously.

This left \$174 million in GF reductions to be achieved through proposals developed by the Department and submitted to the Legislature for consideration by May 15, 2011. These proposals must be adopted by the Legislature before they can be implemented.” Public forums are being conducted in early May 2011 to allow input to the proposals prior to their submittal to the Legislature.

In addition to this action, the Governor is expected to release his May Revision (aka May Revise) to the proposed 2011-12 State budget by May 16, 2011. This revision normally addresses updated caseload information and, in this instance, may contain additional cost savings proposals. The Legislature historically conducts budget hearings on the May revise and these will likely include DDS’ proposals.

ANALYSIS/DISCUSSION: While information on the content of the May Revise is not available at the time of this writing; DDS proposals were issued on May 3, 2011. A

copy of the document is attached and was distributed to all Council and LPPC members as well as local area boards upon receipt. With the concurrence of the Council Chairperson, staff provided the following comments at the May 6, 2011 hearing in Sacramento:

- Thank DDS for the opportunity to participate and provide input into the development of their proposals
- Request that a plain language version of the document be developed for ease of understanding by individuals with developmental disabilities and others who might benefit from such information.
- Commend and support the proposals designed to increased federal financial participation, thus reduce general funds costs for services and supports.
Recommend immediately implementing the “benefits card” submittal on a voluntary basis.
- Question: What is the anticipated impact of the level funding for the Office of Administrative Hearings contract to the conduct fair hearings?
- Support the examination of a consolidated electronic billing system to reduce duplicative administrative costs in regional center system.
- Without seeing the exact language and exemption criteria, the Annual Family Program Fee proposal is another way to apply an income factor to the system, thus further eroding the entitlement. Assuming the savings, by generating income, one could anticipate that the language will read, “no pay-no services beyond eligibility, needs assessment and case management”. While the amount is small and once annually, the Legislature may see the potential opportunity to generate even more money and savings, thus increase the costs while also reducing the services.
- Prior to the ARM rate system, people with varying needs could live together in residential homes because the rate was assigned to their needs; then ARM assigned the rate to the facility and some residents were forced to remain more dependent because providers did not want to lose the income, or the resident lost their home. This proposal appears to be a way to protect the resident’s home while adjusting for their change in service level needs. However since the proposal has a savings target, it is clear that some people will be reassessed and destined for a lower level of care. Will the providers agree? What is the protection for the consumer? Appears there is no statutory language contemplated to protect the consumer in the process.

- For those consumers who would naturally remain in school between ages 18-21, this proposal is logical and places the responsibility where it belongs, but there are two possible scenarios- regional centers will advocate to keep people in school whether they need or would benefit from it, thus reducing potential employment opportunities for youth, and/or schools will lower standards even more and move people out at 18. The change would be made in the regional center IPP, but what about the IEP at education?
- The assumption that because two or more people live together means they do things together is faulty on many fronts. For those who, on the natural, operate as a partnership, this proposal has merit, however its' beginning to look like a "group home setting". An independent evaluation of level of need for SLS services is warranted as currently the evaluations are done by providers.
- All new day service options are a way to reduce the level of services currently available without any data to indicate the potential outcomes for people to achieve more independence, inclusion, productivity and or self-determination. Are these really options if you live in a residential facility? How will the SLS maximizing proposal be implemented? And, what is the availability transportation to accommodate these options. Options are always desirable, but should come as enhancements to achieve outcomes, not just as cost-savings proposals.
- Developing a transportation component to an IPP is a good idea, but there is a big difference between a plan and actual implementation based upon transit availability and the proposal fails to mention the safety of consumers. What about mobility training?

COUNCIL STRATEGIC PLAN OBJECTIVE: Shape public policy that positively impacts Californians with developmental disabilities and their families.

PRIOR COUNCIL ACTIVITY: The Council participated on the DDS workgroups that discussed ideas to address the budget reductions; and previously adopted positions on specific 2011-12 budget proposals.

LPPC RECOMMENDATION(S): Pending receipt of the May Revise due on 5/16/11.

ATTACHMENT(S): Department of Developmental Services Proposals to Achieve \$174 Million in General Fund Savings. (DDS original and plain language version developed by SCDD)

PREPARED: Carol J. Risley, May 10, 2011

**DEPARTMENT OF DEVELOPMENTAL SERVICES
PROPOSALS TO SAVE \$174 MILLION
(SCDD Plain Language Version)**

As part of the 2011-12 State budget process, the Department of Developmental Services (DDS) was told to save more money because of the State has a deficit.

DDS worked with 8 workgroups that included individuals with developmental disabilities, families, service providers, regional centers, unions, and advocates to look for ways to save money.

Using the comments from the workgroups, DDS put together the following ideas to save money:



- 1. Get more money from the federal government through waiver programs to buy services. (Adds \$20.9 million from federal money and saves State money)**



- 2. Give less money to some organizations that contract with DDS. (Saves \$1.5 million)**



- 3. Give less money to regional centers for their staff, offices, and other things. (Saves \$14.1 million)**



- 4. Give less money to the Community Placement Plan (CPP). (Saves \$6.9 million)**



- 5. Make changes in the way rates are set for some services. (Saves \$3.4 million)**



- 6. Make some families of children pay a yearly fee to get regional some center purchased services. (Adds \$3.6 million to save same amount of State money)**



- 7. Let people keep their home even if they need less care from the home. (Saves \$1.3 million)**



8. Use funds through schools to get day services, work, independent living, and transportation for individuals in school when they are 18-22 years old. (Saves DDS \$10.2 million)



9. Make some people who live together and both get supported living services (SLS) to share the supported living services for some things; and don't have the SLS provider decide what services a person needs; have that done by another person. (Saves \$5.4 million)



10. Start new day services that allow individuals to make choices about how many days they want to go to program; let people hire their own staff; and let day services change the way they bill the State for part of a day of services. (Saves \$ 9.6 million)



11. Make parents tell regional centers that behavioral services were provided if they are suppose to be; and let trained paraprofessionals provide behavioral services. (Saves \$3.8 million)



12. Move the Prevention Program to Family Resource Centers and only give information, resource, outreach and referral. (Saves \$7.5 million)



13. Make a transportation plan at the time the individual program plan (IPP) is done so more people can use public transit. (Saves \$1 million)

The total amount of State money saved by these ideas is \$154.5 million in 2011-12 and \$174 million each year after that.

DDS held 3 public hearings in California to let the public talk about these ideas and must give a report to the Legislature by May 15, 2011. Some of these ideas will require that current law (Lanterman Act) be changed and DDS is working on those changes. The Legislature will have to ok the savings ideas and any changes in law and people will be able to talk about these these with the Legislature in budget hearings.

**DEPARTMENT OF DEVELOPMENTAL SERVICES
PROPOSALS TO ACHIEVE \$174 MILLION GENERAL FUND SAVINGS
MAY 2011**

INTRODUCTION

The Department of Developmental Services (the Department) is responsible under the Lanterman Developmental Disabilities Services Act (Lanterman Act) for ensuring that more than 246,000 persons with developmental disabilities receive the services and support they require to lead more independent and productive lives and to make choices and decisions about their lives.

California provides services and supports to individuals with developmental disabilities in two ways: the vast majority of people live in their families' homes or other community settings and receive state-funded services that are coordinated by one of 21 non-profit corporations known as regional centers. A small number of individuals live in four state-operated developmental centers and one state-operated community facility. The number of consumers with developmental disabilities in the community served by regional centers is expected to grow in Fiscal Year (FY) 2011-12 to 251,702. The number of consumers living in state-operated residential facilities will decrease by the end of FY 2011-12 to 1,691.

As a result of the on-going fiscal crisis in California over the last few years, the Department's budget, along with the budgets for many other state departments, has been reduced. To address prior fiscal pressures, service rates established by statute or by the Department have been frozen for many years and rates negotiated by the regional centers were limited in 2008 with the establishment of median rate caps for new providers. During the development of the FY 2009-10 and FY 2010-11 Governor's Budgets, the Department with input from a workgroup comprised of regional centers, service provider representatives, advocacy groups, consumers and family members, and legislative staff developed proposals to reduce or restrict General Fund (GF) growth in the Department's budget. In FY 2009-10, the Department developed proposals that resulted in approximately \$334 million in GF savings and an additional \$200 million in FY 2010-11. Savings proposals impacted both the developmental centers and regional centers, and included a variety of strategies such as restructuring, reducing or suspending various services; restricting eligibility for certain services; and maximizing other available funding sources, primarily federal funds. Most proposals achieved some or all of the savings, with changes to respite exceeding the savings anticipated. In addition to these proposals, payments for regional center operations and to providers of consumer services were reduced by 3 percent in FY 2009-10 and 4.25 percent in FY 2010-11.

Due to continuing and significant pressure on the GF, the Department's budget for FY 2011-12 was decreased by \$576.9 million GF, in addition to other reductions achieved through statewide budget items (e.g. state workforce reductions). Most of the changes necessary to achieve the savings have been identified and adopted by the Legislature. The reductions made to the Department's budget, totaling \$402.9 million GF, will be achieved through continuation of the 4.25 percent payment reduction for regional center operations and purchase of services, additional federal and other alternative funding, administrative cost limits for regional centers and service providers, enhanced auditing, third-party collections and accountability measures, reduced funding for developmental centers, reduced funding for the Prevention Program primarily serving infants and toddlers at risk of a developmental disability, and additional regional center operations reductions.

In addition to reductions in community services, the developmental center budget has continued to decline through closure of state-operated facilities, living unit consolidations, delays in infrastructure repairs, and through cost saving personnel initiatives. In the FY 2011-12 budget, the developmental centers budget was decreased through additional residence consolidations; staffing reductions; delay in infrastructure repairs; additional federal funding; an unallocated reduction; and statewide budget items such as hiring freezes, furloughs, and wage reductions. The Department's headquarters budget has also decreased significantly over the last several years and for the FY 2011-12 budget is impacted by the statewide budget items referenced previously.

This left \$174 million in GF reductions to be achieved through proposals developed by the Department and submitted to the Legislature for consideration by May 15, 2011. These proposals must be adopted by the Legislature before they can be implemented.

Consistent with the Department's on-going efforts to better align its budget with actual expenditures, a review of the most current expenditure information has identified a savings of \$55.6 million GF available in FY 2011-12 that further reduces the amount necessary to be achieved through legislative proposals. This review of expenditure information also identified \$30 million of one-time savings in the current year that will bridge the costs associated with implementation delays of the various proposals to be submitted to the Legislature for the budget year.

To achieve the \$174 million savings, the Department considered reductions in headquarters and regional center operations. The Department identified reductions of \$39.3 million associated with contracts administered by the Department, proposals for increased federal financial participation, and additional reductions in regional center operations funding. After accounting for these proposed reductions, \$79.1 million remains to be achieved through other proposals. All of the proposals are presented later in this document.

Throughout the process, there were many ideas and concepts that were discussed that have significant benefits to our system, but either could not be achieved within the short timeframe or would not generate immediate savings in the budget year. For example, the workgroups discussed: the need to reform the rate-setting systems; the potential benefit to restructuring the service codes used for billing; the need for more direct service providers doing background checks, coupled with increased training and vendorization changes; the value of having a designated benefits coordinator at each regional center; the need for federal, state and local governments to improve coordination of programs and funding; and the benefits and efficiencies of using technology advancements. The Department is committed to pursuing these ideas in the future, as the State's fiscal situation stabilizes and focus can be shifted to long-term improvements in the delivery of services.

PROCESS FOR DEVELOPING PROPOSALS

As the Department bridges this fiscal crisis, we remain committed to maintaining the Lanterman Act entitlement to community-based services and the preservation of the individualized planning process mandated in the Lanterman and Early Intervention Services Acts. For the development of the savings proposals, also referred to in statute as best practices, the Department has undertaken a significant effort to ensure full input was received from consumers, family members, advocates, service providers, regional centers, and the community.

Initial input was received through a statewide survey that was made available through the Department's website, as well as e-mails and letters from over 9,000 interested individuals and organizations. Eight workgroups were subsequently established to provide advice to the Department on savings proposals in the topic areas of behavioral services; day/supported employment/work activity program services; Early Start Program services; health care and therapeutic services; independent and supported living services; residential services; respite services; and transportation services. Representation on each of the eight workgroups included consumers, family members, service providers, advocacy organizations and regional center representatives. The representatives were selected by six statewide organizations with broad interest in regional center services¹, the Association of Regional Center Agencies², statewide organizations who represent service providers in the specific topic areas³, and three organizations

¹ Statewide organizations with broad interest appointed a consumer/family member, a service provider and an organization representative. These organizations included Disability Rights California, State Council on Developmental Disabilities, People First of California, The ARC of California, State Employees International Union, and California Disability Community Action Network.

² ARCA appointed an organization representative, a regional center employee involved in direct service delivery and an Executive Director or Board Member of a regional center.

³ Topic specific organizations appointed a consumer/family member, a service provider and an organization representative.

representing other aspects of our system⁴. Legislative staff also attended the workgroup meetings. The workgroup meetings began in March and continued through mid-April and included over 70 hours of discussion. The Department greatly appreciates the active participation of the workgroup members and their efforts to maintain the system while bridging these difficult budget times.

The savings proposals are intended to provide more uniformity and consistency in the administrative practices and services of the 21 regional centers, promote appropriateness of services, maximize efficiency of funding, and improve cost effectiveness. The Department considered the following in the development of the savings proposals: eligibility, duration, frequency, efficacy, community integration, service provider qualifications and performance, rates, parental and consumer responsibilities, and self-directed service options.

Changes in services based on the proposals will continue to be made through the individual program plan (IPP) or individualized family services plan (IFSP) processes. Consideration was given to the impacts of prior reductions in the specific service areas on consumers, families, and providers. For example, respite services were significantly impacted by the reductions made in 2009-10 to the extent there are no proposals directly associated with this service area.

PUBLIC FORUMS

Following completion of the efforts by the eight workgroups, the Department developed 13 savings proposals based on the discussions in the topic area workgroups, survey results, and other input received from the community. The Department will present these proposals at three public forums to be held in Los Angeles on May 5, 2011; Sacramento on May 6, 2011; and Oakland on May 9, 2011. Additional input from the community will be received and considered, especially regarding the impacts of the proposals. Accessibility by teleconference will be provided at each of the forums for those individuals interested in providing input, but who are unable to attend the meetings in person.

NEXT STEPS

Following the public forum meetings, the Department will finalize the proposals and provide them to the Legislature by May 15, 2011, for their consideration. The Department is still drafting the associated statutory language necessary to implement some of the proposals which will be made available before or on May 15, 2011. For any proposals impacting consumer services in their IPP, the Department's proposed legislation will include language regarding exemption

⁴ These organizations appointed one representative and included the DDS Consumer Advisory Committee, University Centers of Excellence in Developmental Disabilities and an association representing individuals in Developmental Centers (CASHPCR)

processes, where appropriate. The proposals will not be implemented until approved by the Legislature.

PROPOSALS FOR ACHIEVING SAVINGS

1. INCREASING FEDERAL FUNDS FOR REGIONAL CENTER PURCHASED CONSUMER SERVICES.

Summary:

Federal financial participation in the funding of regional center consumer services is a critical component of the State's budget. Currently, federal funding comprises nearly \$1.7 billion of the funding for regional center services. Through this proposal additional federal financial participation in the delivery of regional center consumer services is achieved, with a corresponding decrease in needed State GF dollars.

The Department, through the regional center system, operates a federally approved 1915 (c) Home and Community-Based Services Waiver with a projected 91,933 enrollees in FY 2011-12. Federal reimbursements for the Waiver program in FY 2011-12 are \$1.032 billion (includes Waiver services, clinical teams at regional centers, and administrative costs) per the January 2011 budget. The Department submitted a 1915 (i) State Plan Amendment (SPA) to the federal government in December 2009, with an October 1, 2009 effective date. Through this SPA, the Department will receive federal financial participation in the funding of services received by active regional center consumers (an estimated 40,000) with Medi-Cal benefits who do not meet the level of care criteria for the Waiver. The January 2011 budget reflects an estimated \$160.8 million in federal reimbursement for regional center expenditures associated with the 40,000 consumers projected for coverage under this federal program. Federal funding is also received for the cost of day and transportation services provided to regional center consumers residing in intermediate care facilities. The January 2011 budget includes an estimated \$52.8 million in federal reimbursements associated with the cost of these services for the approximately 7,000 regional center consumers residing in these facilities. The Department receives federal funding through the Money Follows the Person (MFP) Grant related to Lanterman Developmental Center Closure. MFP funding is available to assist individuals in transitioning out of institutions as federally defined, and provides 12 months of service funding upon relocation into a community setting, at an enhanced federal share.

Workgroup participants discussed possible new funding options through the federal 1915 (k) Community Living Options which becomes available to states in October 2011, as well as ways to expand receipt of federal funding through the Department's Home and Community-based Waiver, the 1915(i) SPA, and the federal MFP Grant in which the Department participates. This proposal assumes

increased federal funding in all of these areas. Workgroup members also recommended consumers and families provide a copy of their Medi-Cal, Medicare, and insurance cards at the time of the IPP to ensure federal and other resources are maximized. The Department's proposal includes this recommendation.

Savings:

FY 2011-12 savings

Total Funds (TF):	\$0 (fund shift)
GF:	\$20,932,000

FY 2012-13 savings

TF:	\$0 (fund shift)
GF:	\$22,515,000

This proposal assumes more federal funding in the Department's budget by adding Voucher – Nursing Services to the Waiver, claiming federal money at an enhanced federal match for the first 12 months of services under the MFP Grant for consumers moving from intermediate care, nursing and subacute facilities to integrated community living arrangements, capturing an additional 6 percent of federal funding for 12 months under the 1915 (k) option for eligible consumer services if such services are added to the State Medicaid Plan, receiving federal matching funds for the purchase of infant development programs for Early Start consumers with Medi-Cal and obtaining additional federal funding based on updated expenditures for the 1915 (i) SPA.

Implementation:

This proposal will be effective upon approval of the Legislature. The Department will include in its Waiver renewal request the addition of Voucher- Nursing Services for federal approval, effective October 1, 2011. Implementation of the proposals relative to the 1915 (k) option and obtaining federal financial participation for Early Start infant development programs will require approval of the federal government. Legislation will be needed to require the submittal of benefit cards.

2. DECREASING DEPARTMENT OF DEVELOPMENTAL SERVICES HEADQUARTERS CONTRACTS

Summary:

The Department contracts with a number of organizations to implement programs and projects that provide support, services, and technical assistance across all regional centers. In FY 2011-12, the Department's budget includes \$24.1 million

(\$21.0 million GF) for system wide contracts. In addition to statewide reductions to the headquarters' budget, such as hiring freezes, furloughs, and wage reductions, the Department proposes to reduce six contracts and discontinue two non-mission critical projects, as follows:

Information Technology: The Department's contract with the state-operated data center for support of data systems and data processing will be reduced from \$4,517,000 to \$3,972,000, consistent with a similar reduction made in the current year due to operational efficiencies. This proposal will save \$545,000 GF.

Clients' Rights Advocacy: The Department's contract with Disability Rights California to provide consultation, representation, training, investigation, and compliance with clients' rights will be held at the current year funding level of \$5.295 million for a savings of \$250,000 (\$200,000 GF).

Quality Assessment: The Department contracts with independent organizations to conduct surveys and analyses of consumers and family members about satisfaction with services and personal outcomes. This project will be reduced to \$3.235 million. In FY 2009-10, the Department achieved GF savings of \$2.287 million by consolidating the Life Quality Assessment and Movers Study into one improved quality assurance project. This proposal will save \$530,000 (\$424,000 GF).

Direct Support Professional Training (DSPT): The Department contracts with the California Department of Education to administer the DSPT training and testing through the Regional Occupational Programs. This contract will be reduced from \$3.582 million to \$3.442 million. This reduction will not affect the Department's ability to schedule DSPT trainings at Lanterman Developmental Center for staff that choose to work in the community. This proposal will save \$140,000 (\$85,000 GF).

Office of Administrative Hearings: The Department contracts with the Office of Administrative Hearings to conduct fair hearings required by the Lanterman Act and mediation and fair hearing services required by the California Early Intervention Services Act. The current year level of funding, \$3.15 million, will be maintained without affecting the rights of consumers and families to the fair hearing and mediation processes. This proposal will save \$250,000 (\$200,000 GF).

Special Incident Reporting/Risk Management: In order to maintain and increase federal Home and Community-Based Services Waiver funding, the Department contracts with an independent entity to conduct data analysis, training, site reviews, and provides data, training, and analytical services that mitigate and reduce special incidents. The Department will prioritize the work of this contractor such that federal concerns are addressed while achieving savings.

This contract will be reduced from \$940,000 to \$840,000 and achieve savings of \$100,000 GF.

Self-Directed Services - Training and Development: The Department will reprioritize existing resources to develop and conduct the anticipated training associated with the Self-Directed Services Waiver, if and when it is approved by the federal government. The Waiver was submitted in 2008. This proposal will save \$200,000 GF.

Savings:

FY 2011-12 savings

TF: \$2,015,000

GF: \$1,754,000

FY 2012-13 savings

TF: \$2,015,000

GF: \$1,754,000

Implementation:

These proposals will be effective upon approval of the Legislature. No statutory changes are required.

3. REDUCTIONS AND EFFICIENCY IN REGIONAL CENTER OPERATIONS FUNDING

Summary:

The Department contracts with 21 private, nonprofit regional centers to provide, among other activities specified in law, intake and assessment and life long voluntary case management services to eligible individuals pursuant to the Lanterman Act. Regional centers were created in statute to provide fixed points of contact in the community for persons with developmental disabilities and their families so they may have access to the services and supports best suited to them throughout their lifetime. In FY 2011-12, the regional centers are expected to serve over 246,000 consumers. The law requires that 85 percent of a regional center's operations funding is used for the provision of direct services.

Regional centers play a critical role in the Department's ability to receive and maintain federal funding for the delivery of consumer services. Currently, nearly \$1.7 billion in federal funding is included in the budget for regional center services. It is through the regional center system that the Department meets the federal requirements for the approved Home and Community-Based Services Waiver program. Regional centers are responsible for ensuring that eligible consumers who want to participate on the Waiver are enrolled, service providers

meet the qualifications for providing Waiver services, individual program plans are developed and monitored, consumer health and welfare is addressed, and financial accountability is assured. Regional centers also play a similar role in meeting the federal requirements for the Department's receipt of federal funding in the day and transportation services of approximately 7,000 consumers residing in intermediate care facilities, and the 1915 (i) SPA under review by the Centers for Medicare and Medicaid Services.

The workgroup participants called for reductions to regional center operations as a component of the Department's reduction proposals. There was discussion regarding the implementation of efficiencies that would reduce regional center funding and staffing needs. This proposal achieves reductions through the implementation of provider electronic billing; the elimination of regional center staff positions⁵; funding for one-time costs associated with office relocations or modifications; and funding allocated to regional centers for accelerated enrollment of new Waiver participants (since under the 1915 (i) SPA the Department will receive federal funding for services to virtually all of the remaining Medi-Cal beneficiaries served by the regional centers who reside in non-institutional settings as defined by the federal government, and are not otherwise covered by another federal program). In addition, the proposal assumes an unallocated reduction to the operations budget.

Reductions to regional center operations of \$13.7 million were a component of proposals to achieve the \$334 reduction in FY 2009-10. Funding was eliminated for triennial quality assurance reviews, one-time funding was reduced for office relocations and modifications, and funding associated with the eligibility changes in the Early Start Program and implementation of the Prevention Program was eliminated. In addition, the FY 2011-12 budget for regional center operations was reduced by actions already taken by the Legislature totaling \$27.7 million (\$27.4 million GF) including continuation of the 4.25 percent payment reduction, administrative cost limits, auditing requirements, conflict of interest requirements, staffing reductions, and increased federal funding.

Savings:

FY 2011-12 savings

TF: \$14,565,000
GF: \$14,132,000

FY 2012-13 savings

TF: \$15,881,000
GF: \$15,015,000

⁵ Regional center staff-related reductions include elimination of the positions associated with implementation of the Self-Directed Services Waiver for which federal approval has been pending since 2008; savings associated with the Department's overestimated need for community placement plan resources; and rollback of prior year staffing increases.

The savings will be achieved through staff reductions, efficiencies, and an unallocated reduction in operations.

Implementation:

This proposal will be effective upon approval of the Legislature. Legislation will be needed to implement the electronic billing administrative efficiencies.

4. COMMUNITY PLACEMENT PLAN FUNDING

Summary:

As described in Welfare and Institutions Code section 4418.25, the Department has a statutory responsibility to ensure that individuals with developmental disabilities live in the least restrictive setting, appropriate to their needs. The law establishes a Community Placement Plan (CPP) process designed to assist regional centers in providing the necessary services and supports for individuals to move from developmental centers. It also provides the resources necessary to stabilize the community living arrangements of individuals who are at risk of placements in a developmental center (deflection).

Under the CPP process, each regional center develops and submits an annual CPP to the Department based on the needed resources, services, and supports for consumers moving from a developmental center, as well as the resources needed to prevent developmental center admission. The Department requests CPP funding through the budget process. CPP has to be implemented in accordance with the plan approved by the Department.

CPP has resulted in more people moving from, and reduced admissions to, the developmental centers. In the past five years, regional centers have facilitated the placement of 1,168 consumers and have reduced admissions. For example, in FY 2005-06, 66 consumers were admitted to developmental centers. Thirty-four consumers were admitted in FY 2009-10.

The Department closed Agnews Developmental Center in FY 2008-09 and the state-operated community facility, Sierra Vista, in FY 2009-10. The Department is in the process of closing Lanterman Developmental Center.

As part of the planning process, regional centers must forecast the dates consumers will move into the community as well as when resources will come on line. Often new vendors are needed and development of individualized resources, especially licensed residential arrangements, can take longer than anticipated. Consequently, the Department and each regional center are continuously harmonizing the amount of funds needed to implement the CPP.

The Department has conducted an extensive analysis of the funds budgeted, allocated, and expended and has determined that CPP can be reduced by \$10 million (\$7.3 million GF) by funding CPP closer to the amount actually needed in the current and immediately prior FYs. Of this amount, \$315,000 is reflected in the proposal to reduce regional center operations funding. This will result in maintaining the level of placements, deflections, start-up activities, and the operational resources needed to design and implement the very individualized CPP. This reduction will not impact the Department and regional center efforts to facilitate consumers moving from a developmental center or prevent admissions to a developmental center.

There were no changes to the CPP in the FY 2009-10 budget reduction process. CPP was not the subject of workgroup discussion.

Savings:

FY 2011-12 savings⁶

TF: \$9,685,000
GF: \$6,966,000

FY 2012-13 savings⁶

TF: \$9,685,000
GF: \$6,966,000

Implementation:

This proposal will be effective upon approval of the Legislature.

5. RATE EQUITY AND NEGOTIATED RATE CONTROL

Summary:

The rate setting methodologies for services funded by regional centers are specified in law. These methodologies include: negotiations resulting in a rate that does not exceed the regional center's median rate for that service, or the statewide median, whichever is lower, and the provider's usual and customary rate (U&C), which means the rate they charge the members of the general public to whom they are providing services. A 4.25 percent payment reduction to regional center funded services went into effect July 1, 2010 (a 3 percent reduction was previously in effect commencing February 2009), but did not apply to service providers with a U&C rate. The intent of the U&C exemption was for businesses that serve the general public without specialty in services for persons with developmental disabilities. This proposal clarifies that the exemption to the

⁶ The remaining \$315,000 GF is reflected in the proposal, Reductions and Efficiency in Regional Center Operations Funding.

4.25 percent payment reductions does not apply to providers specializing in services to persons with developmental disabilities. This proposal also calls for the Department to update the calculation of the regional center and statewide median rates, established as part of the 2008-09 budget reductions, applicable to new vendors providing services for which rates are set through negotiation. The proposal only impacts providers who were not previously impacted by the 4.25 percent payment reduction and new providers of negotiated rate services.

This proposal is consistent with workgroup discussions regarding the U&C modification and suggestions that any rate changes be focused on new or higher rate providers.

Savings:

FY 2011-12 savings

TF: \$6,008,000

GF: \$3,432,000

FY 2012-13 savings

TF: \$14,312,000

GF: \$ 9,568,000

The savings associated with the 4.25 percent payment reduction was calculated by reviewing service codes that included providers who will no longer be exempted from this payment reduction.

To estimate the savings associated with updating the median rates, the Department used existing rate data and recalculated the median rates for a sample of service codes.

Implementation:

This proposal will be effective upon approval of the Legislature. The 4.25 percent payment reduction can be implemented immediately and the Department will update the median rates used by regional centers for new providers of applicable services effective October 1, 2011.

6. ANNUAL FAMILY PROGRAM FEE

Summary:

An annual family program fee in the amount of \$150 or \$200, depending on family income, will be assessed for families of consumers receiving services from the regional centers who meet the following criteria:

- The child is under age 18.
- The child lives at home.
- The child is not eligible for Medi-Cal.
- The family's income is at or above 400 percent of the Federal Poverty Level (FPL) based upon family size.
- The child or family receives services beyond eligibility determination, needs assessment, and case management. Families of consumers who only receive respite, day care, and/or camping services are also excluded under the Annual Family Program Fee if assessed separately in the Family Cost Participation Program (FCPP).

Savings:

FY 2011-12 savings

TF: \$3,600,000

GF: \$3,600,000

FY 2012-13 savings

TF: \$7,200,000

GF: \$7,200,000

It is estimated that there will be 35,000 families eligible for the Annual Family Program Fee.

There will be an exemption process outlined in statute for families with special circumstances.

Implementation

This proposal will be effective upon approval of the Legislature. The annual family program fee will be assessed by regional centers at the time of the development of the IPP/IFSP, and annually thereafter. Legislation will be required for implementation and federal approval may be required for consumers in the Early Start Program.

7. MAINTAINING THE CONSUMER'S HOME OF CHOICE – MIXED PAYMENT RATES IN RESIDENTIAL FACILITIES WITH ALTERNATIVE RESIDENTIAL MODEL (ARM) RATES

Summary:

Rather than a consumer having to leave their preferred residential living arrangement because their service and support needs have changed, this proposal allows for regional center payment of a lower rate that meets the needs of the individual while leaving intact the higher level of services and support for the other individuals residing in that home and the facility's ARM service level designation.

Current regulations for ARM facilities (Title 17, Section 56902) allow regional centers to negotiate a level of payment for its consumers that is lower than the vendored rate established by the Department (ARM rate). However, the vendor must still provide the same level of service (i.e. staffing ratios and hours, and consultant services) for which they are vendored (i.e. the designated ARM service level for the facility). This proposal would allow, pursuant to the consumer's IPP, and a contract between the regional center and residential provider, a lower payment rate for a consumer whose needs have changed but wants to maintain their residency in the home, without impacting the facility's ARM service level designation.

This concept was discussed in the Residential Services Workgroup for potential cost savings.

The majority of consumers living in 24-hour residential care reside in ARM facilities. The FY 2011-12 budget includes \$852.7 million to fund residential services for over 21,000 consumers living in over 4,700 community care facilities.

In the FY 2009-10 adopted budget reduction proposals, residential services were impacted by the implementation of the Uniform Holiday Schedule for Day Programs. When programs impacted by the holiday schedule were closed, residential facilities had associated increased staffing costs.

Savings:

FY 2011-12 savings

TF: \$2,255,000
GF: \$1,364,000

FY 2012-13 savings

TF: \$4,176,000
TF: \$2,526,000

This estimate assumes approximately 450 consumers residing in service level 4 ARM facilities are determined through their IPP to no longer need the level of service provided by that facility through its assessed rate, want to remain in their home, and a lower level of payment (within the existing ARM rate structure) would be negotiated and established in contract. Assumptions were made regarding the reduction levels of payment dependent on the ARM service level in which the consumer resided.

Implementation:

This proposal will be effective upon approval of the Legislature. For the consumer, a change in the level of residential services would be done through

the IPP process, and subsequently through a contract between the regional center and residential service provider.

8. MAXIMIZE UTILIZATION OF GENERIC RESOURCES - EDUCATION SERVICES

Summary:

Publicly funded school services are available to regional center consumers to age 22. The Lanterman Act requires the use of generic services to meet the needs of the consumers, as applicable, and further states that regional centers shall pursue all possible sources of funding for consumers receiving regional center services, including school districts (Welfare and Institutions Code section 4659). The California Education Code addresses education and related services to pupils ages 18 to 22 years of age. The Education Code lists services provided by the school system, including orientation and mobility services, school transition services, specialized driver training instruction, specifically designed vocational education and career development, and transportation. For consumers who remain eligible for services through the public school system, this proposal requires the regional centers to use the generic education resources in lieu of purchasing day program, work/employment, independent living, and associated transportation services on their behalf. Regional centers may encourage schools to use existing vendors to meet consumer needs.

Workgroup participants recommended greater reliance on the educational system for services, as appropriate. Participants expressed the need to maximize service provision through the mandated transition plan for individuals with special education needs.

The budget reductions in FY 2009-10 required regional centers to use generic educational services for minor school aged children, with exceptions in statute.

Savings:

FY 2011-12 savings

TF: \$13,696,000
GF: \$10,236,000

FY 2012-13 savings

TF: \$18,188,000
GF: \$13,593,000

The savings estimate uses actual 2009-10 data for consumers 18 to 22 years of age who are receiving services corresponding to this proposal. The assumption was made that 50 percent of consumers aged 18 to 22 will not have a certificate of completion or diploma and will receive needed services through the generic

resource - public education system. The estimate assumes the use of generic education resources will be addressed through the IPP for consumers currently receiving the identified services through the regional center.

Implementation:

This proposal will be effective upon approval of the Legislature. The IPPs of consumers 18 to 22 years of age receiving regional center funded day, independent living, and/or associated transportation services potentially impacted by the implementation of this proposal will need to be reviewed to determine eligibility for the generic educational services. Changes to existing plans will be done through the IPP process.

9. SUPPORTED LIVING SERVICES: MAXIMIZING RESOURCES

Summary:

Supported Living Services (SLS) is a community living option that supports adult consumers who choose to live in homes they control through ownership, lease, or rental agreement. In supported living, a consumer pays for living expenses (e.g. rent, utilities, food, and entertainment) out of Social Security Income, work earnings or other personal resources. The regional center pays the vendor to provide the SLS. The consumer may also receive other kinds of publicly-funded services like Medi-Cal, mental health services, vocational services, and In-Home Supportive Services (IHSS).

It is estimated that for FY 2011-12, 9,803 consumers will receive SLS at a total cost of approximately \$383 million. In the past five years, the number of consumers using SLS has increased by 33 percent and expenditures have grown by 83 percent.

During workgroup meetings, participants discussed ways to maximize regional center funded services while maintaining the individualized nature of SLS. One proposed strategy is to apply a feature used for IHSS services. Consumers who share a household with other adults likely also share common tasks. Savings for SLS could be accomplished through identifying shared tasks that can be provided at the same time and by the same direct support professional, provided each person's needs is met. Identifying, during IPP meetings, shared tasks, such as meal preparation and clean up, menu planning, laundry, shopping, general household tasks, and errands, would enable the SLS provider to provide efficiencies in SLS services.

A second area of discussion among participants was how the amount and type of SLS service is determined. Currently, most providers conduct this assessment as an important component of getting to know the consumer they will be supporting. The workgroup discussed the value of conducting an independent

assessment when service needs are significant, while preserving the need for the provider to have a comprehensive understanding of the type and amount of services needed.

To maximize resources in SLS, this proposal would, similar to what is done in IHSS, require regional centers to assess during IPP meetings whether there are tasks that can be shared by consumers who live with roommates. Secondly, to minimize the possibility of 'over' supporting a person, an independent needs assessment will be required for all consumers who have SLS costs that exceed the statewide or regional center mean, whichever is lower. The assessment would be completed by an entity other than the SLS agency providing service and be used during IPP meetings to determine the services provided are necessary and sufficient and that the most cost effective methods of service are utilized.

As part of FY 2009-10 reductions, SLS achieved savings of \$22.9 million in Total Funds and \$15.1 million in GF. Savings were associated with SLS vendors helping consumers get IHSS within five days of moving into supported living; regional centers reviewing SLS rates and only supplementing consumer's rent in extraordinary circumstances; and having consumers using SLS who share a home use the same SLS provider if possible.

Savings:

FY 2011-12 savings

TF: \$9,948,000
GF: \$5,461,000

FY 2012-13 savings

TF: \$19,896,000
GF: \$10,924,000

For shared tasks, it is estimated that 40 percent of the total costs of SLS are for consumers who share housing with at least one other adult and, among those house mates, approximately 10 percent of tasks can be shared. Since any changes will be made through the IPP process, it is estimated that 50 percent of savings will be realized in FY 2011-12, with full savings achieved in FY 2012-13.

For assessments, 33.4 percent of SLS population is over the statewide or regional center annual average SLS cost and these 33.4 percent SLS consumers share 80.9 percent of the total SLS costs. It is estimated that 5 percent of the total SLS cost for those above the SLS annual average mean would be saved by requiring an independent assessment of existing SLS consumers. Since any changes will be made through the IPP process, it is estimated that 50 percent of

savings for existing SLS consumers will be realized in FY 2011-12 with full year savings in FY 2012-13.

Implementation:

This proposal will be effective upon approval of the necessary statutory changes by the Legislature. Changes to an individual's SLS will be made through the IPP process.

10. INDIVIDUAL CHOICE DAY SERVICES

Summary:

Over the past several years there has been extensive community discussion regarding best practices for delivery of day services. Consumers, family members, regional center staff, and vendors publicly testified that the current array of day services options is insufficient to meet changing consumer needs. Young consumers want the opportunity to attend college and to develop the job skills necessary to get stable employment. Other adults want the opportunity to contribute to their community through volunteerism or simply have the flexibility to tailor when, where, and how often they attend a day program. A number of consumers want the opportunity to direct their day services.

Twenty-five percent of the regional center purchase of service budget is spent on Day Program and Habilitation Services (i.e., work services.) The Department estimates expenditures of nearly \$930 million in FY 2011-12 for these programs.

To achieve savings in FY 2009-10, the Department proposed three strategies that impacted day program services: expansion of the Uniform Holiday Schedule, an option for reduced programming for Seniors, and Custom Endeavor Option (CEO) to allow for more individualized services. The proposed GF savings were Uniform Holiday Schedule \$16.3 million; Senior Option \$1 million; and CEO \$12.7 million. However, only the Uniform Holiday Schedule change achieved savings. No savings were achieved for the Senior or CEO Options.

During recent workgroup meetings, the Senior and CEO Options, and the barriers associated with implementing them, were discussed. The workgroup members conveyed to the Department that savings were difficult to achieve due to regulatory restrictions on staffing ratios, not being able to backfill if a consumer chose a different option, and the difficulty of implementing the options within the current rate structure. Workgroup participants advised the Department to review individualized day program service options and address the barriers surrounding fixed staffing ratios and operating costs when proposing any individual choice options. The Residential Services workgroup raised concerns about the practice

of some day programs ending the program day very early and returning consumers to their residence after a few hours, thereby shifting costs.

The Department considered the input from the workgroups and community concerning the importance of consumers having alternative choices to traditional day programs in its development of the FY 2011-12 proposals. Two of the proposals presented by the Department address the community's eagerness for greater consumer choice in day services. These proposals also deal with the barriers expressed by providers in implementing the FY 2009-10 proposals.

Tailored Day Program Service Option (TDS): TDS is designed to meet the needs of consumers who choose a program focused on their individualized needs and interests to develop or maintain employment and/or volunteer activities. In this option, a consumer can choose to attend fewer program days or choose the hours of participation. The consumer can also choose how to participate in the program. Through the IPP process, the consumer, vendor, and regional center can create a program tailored to the consumer's needs. Once the type and amount of service desired by the consumer is determined, the regional center and vendor can negotiate the appropriate hourly or daily rate. Vendors will have service designs to meet the needs of the consumers. Staffing may be adjusted but must meet all health and safety requirements for the consumer and meet the consumer's tailored needs. The TDS is in lieu of any other day program service. Regional centers will be able to pay the provider a higher rate for customized services as long as the required savings are achieved and the vendor will no longer be prohibited from backfilling the day program slot. TDS will replace the Senior and CEO Options currently in statute.

Vouchered Community-Based Training Service Option (VCTS): VCTS is designed for consumers and/or parents who choose to directly hire a support worker to develop functional skills to achieve community integration, employment or participation in volunteer activities. A Financial Management Services entity will be available to assist the consumer and/or parent in payroll activities. Consumers who choose this option will have up to 150 hours of services each quarter. The VCTS is in lieu of any other day program service.

Modified Full and Half-Day Program Attendance Billing: To ensure maximization of existing resources and to address concerns of residential providers, the proposal would modify the current billing for day programs that bill a daily rate to be consistent with the Work Activity Program (WAP) full and half-day billing requirements. WAP billing requires a minimum of two hours attendance and provides for half-day billing. Currently, California regulations governing the provision of day programs are silent on what constitutes a full or half-day for billing purposes. Programs could shorten their service day to less than four hours and still receive payment for a full day. This proposal would ensure the consumer is receiving the level of services purchased. This requirement will not apply to TDS or VCTS services.

Savings:**FY 2011-12 savings**

TF: \$12,839,000

GF: \$ 9,629,000

FY 2012-13 savings

TF: \$16,477,000

GF: \$12,358,000

The consumer choice day program and modified billing proposals combined are designed to achieve the expected but unachieved savings associated with the Senior and CEO Options enacted in the 2009-10 budget process.

Tailored Day Program (TDP) Service Option: This proposal assumes 5 percent of consumers will choose this option in lieu of their current day program. It also assumes the regional center can negotiate the program service but not pay a rate that exceeds the regular rate associated with four days per week if the vendor has a daily day program rate or the equivalent of 4/5 of the hours for a consumer who is utilizing a vendor with an hourly rate prior to entering into a TDP.

Vouchered Community-Based Training Service Option: This proposal assumes 2 percent of consumers in day programs, look alike day programs, and work activity programs will choose this option in lieu of their current day program. This proposal establishes a rate of \$13.47 per hour, including employer related taxes, and a maximum of 50 hours per month of service. The rate assumes a \$12 per hour wage to the support worker. The rate includes transportation needed to provide the service. The estimated savings assumes a cost associated with a financial management services entity to assist the consumer and/or parent in payroll activities.

Modified Full and Half-Day Program Attendance Billing: This proposal assumes that 15 percent of consumers in daily rate day programs would be reduced by a half day each month based on their attendance.

Implementation:

This proposal will be effective upon approval of the necessary statutory changes by the Legislature. Implementation of the TDS and VCTS options will be individualized and phased in through the IPP process.

11. MAXIMIZING RESOURCES FOR BEHAVIORAL SERVICES

Summary:

Behavioral Services are services that provide instruction and environmental modifications to promote positive behaviors and reduce behaviors that interfere with learning and social interaction. Behavioral Services can include designing, implementing and evaluating teaching methods, consultation with specialists, and behavioral interventions. It can also include training for consumers and/or parents on the use of behavioral intervention techniques and home-based behavioral intervention programs that are implemented by parents for their children. Department regulations establish the qualifications for the various professionals delivering these services.

This proposal would require parents to verify receipt of Behavioral Services provided to their child. This proposal would also authorize the Department to promulgate emergency regulations to establish a new service to allow regional centers to contract with paraprofessionals, with certain educational or experiential qualifications and acting under professional supervision, to provide behavioral intervention services.

Spending on Behavioral Services has increased steadily. Last year, nearly \$249 million was spent to provide services to over 20,000 consumers. This year, the Department anticipates spending over \$291 million on Behavioral Services.

During recent workgroup meetings, participants discussed whether having parents confirm the provision of Behavioral Services would reduce the unintended occurrence of incorrect billings. Behavioral Services provided to children are often frequent in occurrence, increasing the possibility of inaccurate billings.

Additionally, workgroup members felt that allowing qualified paraprofessionals to provide intervention services could result in cost savings. Participants considered that undergraduates studying in a field relevant to behavioral intervention and other individuals with experience working with people with developmental disabilities could, with sufficient supervision and training, provide some intervention services. Because these workers would be paraprofessionals, the rate of pay could be lower while maintaining the quality and consistency of the service.

In FY 2009-10, the Department implemented statute calling for regional centers to purchase Behavioral Services consistent with evidence-based practices and addressing the role of parents in the treatment plan. The usefulness of an intervention plan is now reviewed on a regular basis to ensure goals and objectives are met. These strategies were estimated to save \$21 million in GF (\$30 million in Total Funds). Savings were partially achieved.

Savings:

FY 2011-12 savings

TF: \$4,893,000

GF: \$3,852,000

FY 2012-13 savings

TF: \$4,893,000

GF: \$3,852,000

It is estimated that total expenditures for Behavioral Services would be reduced by 1 percent through parental verification.

It is estimated that 25 percent of the existing service costs will be associated with the paraprofessional service. The paraprofessional rate will be established at 75 percent of the regional center's median rate for Behavior Management Assistant.

Implementation:

This proposal will be effective upon approval of the Legislature. Statutory changes will be required to implement the parental verification. Regulations will be developed to add the paraprofessional services.

12. TRANSFER REDUCED SCOPE PREVENTION PROGRAM TO THE FAMILY RESOURCE CENTERS

Summary:

The Prevention Program was established on October 1, 2009, to provide services in the form of intake, assessment, case management, and referral to generic agencies for those infants and toddlers, 0 to 2 years of age, who are not eligible for Early Start services but who are at risk for developmental delay. The program was established subsequent to changing eligibility for the Early Start program to what is required for receipt of grant funding under the federal Individuals with Disabilities Education Act (IDEA), Part C. Prevention Program services are provided through the regional centers.

As of March 2011, there were 3,258 children in the Prevention Program. Regional centers are funded through a block grant, based on caseload. In FY 2010-11, \$18,150,000 of GF was allocated. The Prevention Program is currently budgeted at \$12 million for FY 2011-12.

This proposal would decrease the required functions of the Prevention Program to information, resource, outreach, and referral; transfer responsibility for these

functions to Family Resource Centers (FRC); and reduce funding to \$4.5 million in FY 2011-12 and \$2 million in FY 2012-13. Since approximately 3,200 children remain in the Prevention Program, this proposal assumes \$2.5 million for regional centers to complete services to the existing caseload and \$2 million for FRCs to serve new referrals. Beginning July 1, 2012, the program would be completely transferred to the FRCs through a contract between the Department and the Family Resource Center Network of California, or a similar entity.

Regional centers will continue to provide all infants and toddlers with intake, assessment, and evaluation for the Early Start Program. Infants and toddlers ineligible for the Early Start Program would be referred to the FRCs.

The workgroup participants discussed the under utilization of the Prevention Program and suggested review for cost and program effectiveness.

In FY 2009-10, budget savings of \$54.5 million were achieved through narrowing the criteria for eligibility for the Early Start Program to what is required for the federal IDEA, Part C funding. Additional legislation was passed to discontinue the provision of non-federally required services. Parents were also required to use private insurance, if available, for services.

Savings:

FY 2011-12 savings

TF: \$7,500,000
GF: \$7,500,000

FY 2012-13 savings

TF: \$10,000,000
GF: \$10,000,000

The savings assumes a transition period for individuals currently in the Prevention Program and referral of new infants and toddlers to FRCs.

Implementation:

This proposal will be effective upon approval of the necessary statutory changes by the Legislature.

13. ENHANCING COMMUNITY INTEGRATION AND PARTICIPATION – DEVELOPMENT OF TRANSPORTATION ACCESS PLANS

Summary:

Current law provides that regional centers will not fund private, specialized transportation services for an adult consumer who can safely access and utilize

public transportation when that transportation modality is available and will purchase the least expensive transportation modality that meets a consumer's needs as set forth in the IPP/IFSP. To maximize consumer community integration and participation and to address barriers to the most integrated transportation services, a transportation access plan would be developed at the time of the IPP, for consumers for whom the regional center is purchasing specialized transportation services or vendored transportation services from the consumer's day, residential or other provider receiving regional center funding to transport the consumer to and from day programs, work and/or day activities. The plan would address the services needed to assist the consumer in developing skills to access the most inclusive transportation option that can meet the consumer's needs. The Transportation Workgroup recommended the requirement for the development of transportation access plans.

The FY 2009-10 reduction proposals resulted in annual savings of \$39.9 million in Total Funds and \$36.6 million in General Funds in the area of transportation. In addition to the statutory provision above regarding the funding of private, specialized transportation services, the law specifies that the regional centers may now only fund transportation for a minor child living in the family residence if the family provides sufficient written documentation to demonstrate that it is unable to provide transportation for the child.

Savings:

FY 2011-12 savings

TF: \$1,473,000
GF: \$1,075,000

FY 2012-13 savings

TF: \$2,945,000
GF: \$2,150,000

Savings assumes 1.5 percent of consumers will access more inclusive forms of transportation. Transportation Access Plans will be developed during the IPP process, as applicable. The estimate assumes the IPPs are staggered evenly over the FY commencing July 1, 2011.

In addition to this proposal, transportation savings are also identified in the "Individual Choice Day Services" proposal and the "Maximize Utilization of Generic Resources - Education Services" proposal.

Implementation:

This proposal will be effective upon approval of the Legislature. Through the IPP process, transportation access plans will be developed for consumers as appropriate.

Department of Developmental Services
Draft Proposals to Achieve \$174 Million in General Fund Savings

	2011-12		Annual	
	TF	GF	TF	GF
Reduced Expenditure Savings that Allow Reduction in Savings Required through Proposals	\$ 55,603,000	\$ 55,603,000	\$ 55,603,000	\$ 55,603,000
1. Increasing Federal Funding for Regional Center Purchased Consumer Services	\$ -	\$ 20,932,000	\$ -	\$ 22,515,000
• Add Voucher - Nursing Services to the HCBS Waiver	\$ -	\$ 528,000	\$ -	\$ 528,000
• Money Follows the Person for Residents of Institutional Settings	\$ -	\$ 1,881,000	\$ -	\$ 3,464,000
• Enhanced Funding from 1915(k) Medicaid State Plan	\$ -	\$ 1,200,000	\$ -	\$ 1,200,000
• Obtain Federal Funding for Infant Development Program	\$ -	\$ 13,223,000	\$ -	\$ 13,223,000
• 1915(i) New Expenditures	\$ -	\$ 4,100,000	\$ -	\$ 4,100,000
2. Decreasing Department of Developmental Services Headquarters Contracts	\$ 2,015,000	\$ 1,754,000	\$ 2,015,000	\$ 1,754,000
• Information Technology	\$ 545,000	\$ 545,000	\$ 545,000	\$ 545,000
• Clients' Rights Advocacy	\$ 250,000	\$ 200,000	\$ 250,000	\$ 200,000
• Quality Assessment	\$ 530,000	\$ 424,000	\$ 530,000	\$ 424,000
• Direct Support Professional Training	\$ 140,000	\$ 85,000	\$ 140,000	\$ 85,000
• Office of Administrative Hearings	\$ 250,000	\$ 200,000	\$ 250,000	\$ 200,000
• Risk Management	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
• Self Directed Services Training	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000
3. Reduction and Efficiency in Regional Center Operations Funding	\$ 14,565,000	\$ 14,132,000	\$ 15,881,000	\$ 15,015,000
• Self Directed Services Waiver Reduced Staffing	\$ 861,000	\$ 861,000	\$ 861,000	\$ 861,000
• Community Placement Plan Reduced Staffing	\$ 315,000	\$ 315,000	\$ 315,000	\$ 315,000
• Roll Back of Prior Year Staffing Increase	\$ 1,902,000	\$ 1,902,000	\$ 1,902,000	\$ 1,902,000
• Reduced Accelerated Waiver Enrollment Funding	\$ 1,771,000	\$ 1,771,000	\$ 1,771,000	\$ 1,771,000
• Administrative Efficiency - Electronic Billing Process to All Providers	\$ 1,316,000	\$ 883,000	\$ 2,632,000	\$ 1,766,000
• Eliminate One-Time Costs for Office Relocations and Modifications	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000	\$ 3,000,000
• Unallocated Reduction	\$ 5,400,000	\$ 5,400,000	\$ 5,400,000	\$ 5,400,000
Proposals Associated with Purchase of Consumer Services	\$ 71,897,000	\$ 53,115,000	\$ 107,772,000	\$ 79,137,000
4. Community Placement Plan Funding	\$ 9,685,000	\$ 6,966,000	\$ 9,685,000	\$ 6,966,000
5. Rate Equity and Negotiated Rate Control	\$ 6,008,000	\$ 3,432,000	\$ 14,312,000	\$ 9,568,000
6. Annual Family Program Fee	\$ 3,600,000	\$ 3,600,000	\$ 7,200,000	\$ 7,200,000
7. Maintaining the Consumer's Home of Choice - Mixed Payment Rates in Residential Facilities with Alternative Residential Model (ARM) Rates	\$ 2,255,000	\$ 1,364,000	\$ 4,176,000	\$ 2,526,000
8. Maximize Utilization of Generic Resources - Education Services	\$ 13,696,000	\$ 10,236,000	\$ 18,188,000	\$ 13,593,000
9. Supported Living Services: Maximize Resources	\$ 9,948,000	\$ 5,461,000	\$ 19,896,000	\$ 10,924,000
10. Individual Choice Day Services	\$ 12,839,000	\$ 9,629,000	\$ 16,477,000	\$ 12,358,000
11. Maximizing Resources for Behavioral Services	\$ 4,893,000	\$ 3,852,000	\$ 4,893,000	\$ 3,852,000
12. Transfer Reduced Scope Prevention Program to the Family Resource Centers	\$ 7,500,000	\$ 7,500,000	\$ 10,000,000	\$ 10,000,000
13. Enhancing Community Integration and Participation - Development of Transportation Access Plans	\$ 1,473,000	\$ 1,075,000	\$ 2,945,000	\$ 2,150,000
Total Reductions	\$ 144,080,000	\$ 145,536,000	\$ 181,271,000	\$ 174,024,000



CONSUMER ADVISORY COMMITTEE MEETING NOTICE/AGENDA

Posted on www.scdd.ca.gov



DATE: Tuesday, May 24, 2011



TIME: 10 a.m. – 4 p.m.



PLACE: Holiday Inn
300 J Street
Sacramento, CA 95814
(916) 446-0100

1. WELCOME/INTRODUCTIONS

Jennifer Allen

2. CAC STRUCTURE

Jennifer and
Mark

- Mission Statement
- Role
- Draft Bylaws

3. LEADERSHIP

- Statewide Advocacy
- Leadership Coaching

Carol
Mark

4. STATE COUNCIL AGENDA REVIEW

- Employment First Report and Draft Video
- Draft State Strategic Plan
- State Budget – DDS Proposals and May Revision

Carol and Mark
Carol
Carol

5. CONSUMER REPORTS AT SCDD MEETINGS

Mark

6. ADJOURN

Jennifer

AGENDA ITEM DETAIL SHEET

ISSUE: Appointment of Executive Director at Area Board 1

BACKGROUND: Welfare and Institutions Code, section 4553 (c) (1) states, in part:

“Each area board shall have an executive director, nominated by the affirmative votes of a majority of the members of the area board, appointed by the executive director of the state council, and approved by the state council....”

ANALYSIS/DISCUSSION: The former executive director of Area Board 1 is retiring, thus the Board conducted a recruitment process to identify a new executive director. As reflect in the attached letter from Area Board I, on April 16, 2011 the board, by a majority vote and unanimous decision, nominated Dawn Morley, the current Acting Executive Director to be appointed as the new director.

In turn, I spoke with Ms. Morley about the position and am familiar with her work both as a Community Program Specialist and acting executive director. I concur with the Board’s nomination and recommend Council approval of my appointment of Dawn as the new executive director of Area board 1.

COUNCIL STRATEGIC PLAN OBJECTIVE: Improve the SCDD organization and operations to effectively support the SCDD Vision and Mission and work collaboratively with other pertinent state agencies.

PRIOR COUNCIL ACTIVITY: None

RECOMMENDATION(S): Approve the Council Executive Director’s appointment of Dawn Morley as the executive director of Area Board 1 contingent upon receipt of a hiring freeze exemption from the Governor’s office.

ATTACHMENT(S): Letter of nomination from Area Board 1 and Dawn Morley’s application materials (redacted to remove private information).

PREPARED: Carol J. Risley, May 10, 2011



AREA I DEVELOPMENTAL DISABILITIES BOARD

P.O. BOX 245, UKIAH, CALIFORNIA 95482-0245

PHONE (707) 463-4700
CALNET 553-4700
FAX (707) 463-4752

April 18, 2011

Carol J. Risley, Executive Director
State Council on Developmental Disabilities
1507 21st Street, Suite 210
Sacramento, CA 95811



Dear Carol,

I am pleased to inform you, on behalf of Area Board 1, we have completed our comprehensive search for a new Executive Director. At our April 16, 2011 board meeting, by majority vote and unanimous decision, we nominated Acting Executive Director, Dawn Morley to the position and announced this nomination publically. We are delighted that Ms. Morley has accepted our offer to serve as the Executive Director of Area Board 1.

Ms. Morley reflects the professionalism and character qualities that we desire for this agency and the people we serve. We are confident in Ms. Morley's abilities and believe she will be an asset to the State Council on Developmental Disabilities as well.

We respectfully await your appointment and, based upon the approved hiring timeline, anticipate the Council's confirmation of Ms. Morley's appointment at the May 25, 2011 State Council meeting.

I would appreciate receiving status updates regarding this process and if you have any questions or if you need additional information, please contact me directly at 707-272-7006 or jl.clevenger@live.com.

Thank you in advance for your prompt action in this matter.

Sincerely,

A handwritten signature in blue ink that reads 'Jeff Clevenger'.

Jeff Clevenger, Chair
State Council on Developmental Disabilities ~ Area Board 1

Dawn M. Morley

Willits, CA 95490

e-mail:

APL 9

February 1, 2011

State Council on Developmental Disabilities ~Area Board 1
505 South State Street
Ukiah, CA 95482

Dear Executive Committee Board Members,

This letter is in response to the Executive Director Recruitment Notice which was posted on the State Council Website.

I have been employed by the Area I Developmental Disabilities Board for eleven years. In addition to extensive knowledge of the day-to-day operations of the agency, I have a profound belief in the work of the Area Board and the State Council on Developmental Disabilities. I am dedicated to Area Board's Mission and Vision to serve the clients and their families. My diverse background as well as the special projects and activities that I have participated in during my tenure with this agency have provided an excellent foundation for me to contribute to the future of the agency and this Board.

As requested in the job announcement, enclosed are my résumé and the State Standard Application (Form 678). In addition, I am submitting supplementary information which documents the skills and unique experience that I would bring to the position.

Thank you in advance for your consideration of my application.

Sincerely,



Dawn M. Morley

Dawn M. Morley

Willits, CA 95490

e-mail:

Highlights of Duties and Qualifications

Supervision/Administration

- Supervise front line reception, administrative and accounting staff for Mendocino County Department of Social Services office. Motivate staff, assign and coordinate team duties, evaluate job performance.
- Recruit, organize and supervise individuals for State volunteer program.
- Perform agency budget development, review and analysis.
- Participant on Department of Finance, Area Board and State Council Fiscal Audit Workgroup.
- Facilitate planning and implementation of Local and State Strategic Plan.
- Review and evaluate community development project proposals and grant applications. Monitor all aspects of project development. Provide technical assistance and training to local agencies.
- Primary liaison, responsible for all accounting, staffing and monitoring of large-scale international development projects. Negotiate contracts, monitor work and activities of contracting agencies and individuals. Assess completed projects and provide recommendations for future activities.
- Conduct feasibility studies, research and analyze information and data, synthesize and summarize data, analyze project goals and costs, write project proposals and progress reports, present findings and information.
- Provide administrative support and coordination to the SB 1270 Statewide Stakeholder Workgroup.

Public Relations/Training

- Area Board 1 representative to multiple state, county and local agencies and committees.
- Provide information and referrals to the public regarding issues relating to developmental disabilities.
- Conduct community outreach, education and training regarding health and cultural exchange.
- Interpret and communicate information regarding complex State and County programs and regulations to the public.
- Adapt complex information and literature into plain language format.
- Design and implement worksite training program for developmentally disabled students participating in the Work Ability I program; provide direct supervision and training to program participants. Evaluate student/client progress; provide feedback and recommendations to instructional staff.
- Train and evaluate client/customer service staff for multiple state and county agencies.

Work History

**2000 – Present State of California – State Council on Developmental Disabilities
Area Board I**

Positions: Acting Executive Director, Community Program Specialist II and
Administrative Assistant

1997 – 2000 Mendocino County Social Services

Positions: Staff Services Supervisor and Administrative Assistant III

1991 – 1997 State of Wisconsin

Positions: Customer Services Specialist and Associate Tourism Specialist

1985 – 1989 United State Peace Corps

Position: Community Development Program Manager

Education

Bachelor Degrees from the University of Wisconsin-Madison

❖ Economics

❖ Political Science-International Relations

Relevant Coursework

❖ Public Speaking

❖ Cultural Geography

❖ Accounting

❖ Communication and Public Opinion

❖ Statistics: Economic Measurement

❖ Social Work Advocacy and the Law

❖ Intermediate Macroeconomic Theory

Relevant Training and Career Development Activities

❖ State Council on Developmental Disabilities Governance Training

❖ Instructional Strategies for Children with Disabilities Involved in the Court System

❖ Social/Sexual Issues Training by Dave Hingsburger

❖ Redwood Coast Regional Center Service Standard Workgroup

❖ Redwood Caregiver Resource Center Traumatic Brain Injury Update

❖ Whole Person Clinical Assessment by Dr. Ruth Ryan

❖ Circles of Support Community Building

❖ Critical Focus-Team Crisis Responses

❖ Promoting Support for Persons with Developmental Disabilities and Complex Health Needs

❖ Grassroots Legislative Advocacy

❖ Transition Essentials for Students with Disabilities

❖ Laws and Ethics Governing Boundaries and Multiple Relationships

❖ Consumer Advisory Committee Adaptation Workshop

❖ Identifying and Addressing Alcohol, Tobacco & Other Drug Use During Pregnancy

❖ From School to the Workforce – Bridging the Gap – Youth Workforce Forum

❖ Work for All: The World of Work Employment Symposium

❖ Co-Occurring Mental Illness and Intellectual Disability: Guidelines in Assessment,
Treatment and Policy Issues by Dr. Robert Fletcher

❖ Service Employees International Union (SEIU) Manager/Supervisor Training

References available upon request.

EXAMINATION/EMPLOYMENT APPLICATION

STD. 678 (REV. 6/2010) Page 1

Applications will be processed ONLY for classifications where an examination is in progress and the published final filing date has not passed, or for vacant positions where a department requests an application.

PRINT OR TYPE — PLEASE SEE INSTRUCTIONS ON BACK PAGE

APPLICANT IDENTIFICATION NUMBER (EASY ID)				EASY ID	
FIRST 3 LETTERS OF LAST NAME AT BIRTH	MONTH OF BIRTH	DAY OF BIRTH	LAST 4 DIGITS OF SOCIAL SECURITY NUMBER		
APPLICANT'S NAME (Last)		(First)	(M.I.)	SOCIAL SECURITY NUMBER	
MORLEY		DAWN	M		
MAILING ADDRESS (Number)		(Street)	E-MAIL ADDRESS		WORK TELEPHONE NUMBER
(City)	(County)	(State)	(Zip Code)	HOME/FRS/TTY TELEPHONE NUMBER	
WILLITS	Mendocino County	CA	95490		

EXAMINATION(S) OR JOB TITLE(S) FOR WHICH YOU ARE APPLYING

Area Board 1 Executive Director

PERSONNEL
USE ONLY**ANSWER THE FOLLOWING QUESTIONS:**

- Enter the county in which you would like to take the examination if different from the county of your residence: N/A
- Do you need reasonable accommodation to take an interview or written test? ☐ YES ☒ NO
- Do your religious beliefs prevent you from taking an examination on Saturday? ☐ YES ☒ NO
- Are you now employed by the State of California? (If "YES", fill in the information below.) ☒ YES ☐ NO
 Department: State Council On Developmental Disabilities Subdivision: Area Board 1
- Have you ever been fired, dismissed, terminated, or had an employment contract terminated from any position for performance or for disciplinary reasons? (Applicants who have been rejected during a probationary period, or whose dismissals or terminations have been overturned, withdrawn [unilaterally or as part of a settlement agreement] or revoked need not answer "Yes".) Refer to the Instructions for further information. If "Yes" to Question #5, give details in the Explanations section. ☐ YES ☒ NO

In addition to English, list any other languages you:

a. possess verbal fluency in French

b. possess written fluency in _____

- I certify I can type at a speed of 65 WPM words per minute. (For typing applicants only.)

(ANSWER QUESTIONS 8 AND 9 ONLY IF THE EXAMINATION INDICATES THEY ARE REQUIRED.)

- Do you meet the minimum and/or maximum age requirements? ☒ YES ☐ NO
- Do you possess a valid California Driver License? (If "YES", fill in the information below.) ☒ YES ☐ NO
 License# Class: Restrictions: None

EXPLANATIONS**CERTIFICATION — IMPORTANT — PLEASE READ BEFORE SIGNING — If not signed, this application may be rejected.**

I certify under penalty of perjury that the information I have entered on this application is true and complete to the best of my knowledge. I further understand that any false, incomplete, or incorrect statements may result in my disqualification from the examination process or dismissal from employment with the State of California. I authorize the employers and educational institutions identified on this application to release any information they may have concerning my employment or education to the State of California.

APPLICANT'S SIGNATURE		DATE SIGNED							
		2-7-2011							
APPLICANTS—DO NOT USE THE SPACE BELOW—FOR PERSONNEL USE ONLY									
Classes	01	02	03	04	05	06	Flags	FOR PERSONNEL USE ONLY	
WC for Series/Levels							WC	STATUS	
RC/Flag for Series/Levels								<input type="checkbox"/> ACCEPTED <input type="checkbox"/> REJECTED WC	
							EXPERIENCE		LICENSE REQUIREMENT
							EDUCATION		OTHER
							STAFF		DATE PROCESSED
									175

EXAMINATION/EMPLOYMENT APPLICATION

STD. 678 (REV. 6/2010) Page 2

APPLICANT'S NAME (Last) /ORLEY	(First) DAWN	(M.I.) M	EASY ID
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EDUCATION

DID YOU GRADUATE FROM HIGH SCHOOL? ☒ YES ☐ NO IF NOT, DO YOU POSSESS A GED OR EQUIVALENT? ☐ YES ☐ NO IF NOT, ENTER THE HIGHEST GRADE YOU COMPLETED

UNIVERSITY OR COLLEGE—NAME AND LOCATION, BUSINESS, CORRESPONDENCE, TRADE OR SERVICE SCHOOL	COURSE OF STUDY	UNITS COMPLETED		DIPLOMA, DEGREE OR CERTIFICATE OBTAINED	DATE COMPLETED
		SEMESTER	QUARTER		
University of Wisconsin; Madison, Wisconsin	Economics	158		Bachelor Degree	1985
University of Wisconsin; Madison, Wisconsin	Political Science	138		Bachelor Degree	1984

LICENSES – LIST APPLICABLE LICENSES AND CERTIFICATES INDICATED IN THE EXAMINATION BULLETIN.

(If you are an attorney, please indicate the date you were admitted to the Bar under the Issue Date column, if stated on the examination bulletin.)

LICENSE/CERTIFICATION NUMBER	ISSUE DATE	EXPIRATION DATE	IN THE SPACE BELOW, INDICATE SPECIFIC COURSE REQUIREMENTS NEEDED TO SATISFY REQUIREMENTS FOR THIS EXAMINATION

EMPLOYMENT HISTORY— Begin with your most recent job. List each job separately.

FROM (MM/DD/YY) 11/30/2007	TO (MM/DD/YY) present	TITLE/JOB CLASSIFICATION (Include Range or Level, if applicable) Acting Executive Director/Community Program Specialist II	SUPERVISOR NAME Tom Montesonti
HOURS PER WEEK 40	TOTAL WORKED (Years/Months) 3/3	COMPANY/STATE AGENCY NAME State Council on Developmental Disabilities-Area Board 1	SUPERVISOR PHONE NUMBER 707-463-4700
SALARY EARNED \$ 4620.00	Month PER	ADDRESS 505 S State Street Ukiah CA 95482	
DUTIES PERFORMED			

Staff liaison to local agencies and individuals providing technical assistance, advice and consultation to client/parent groups, legislators and their staff, department staff, and other public and private agency staff regarding issues and services relating to individuals with developmental disabilities. Track and analyze legislation, prepare draft correspondence on behalf of the Board. Provide staff support to standing and ad hoc committees, present public information regarding agency work and activities. Advise and assist individuals and families who request advocacy services with respect to legal, civil and service rights. Conduct strategic planning activities including assessment and analysis of unmet needs. Prepare budget analysis for the Board, monitor agency expenditures, define problems, analyze facts and data, prepare projections and recommendations to the Board and Council. Prepare agency reports for inclusion in Federal Reporting. Representative to the Statewide Employment First Committee which includes an array of members from state agencies, service providers, legislative staff and clients charged with the developing an Employment First Policy and report to the Governor's Office per AB 287.

REASON FOR LEAVING
N/A

FROM (MM/DD/YY) 02/24/2000	TO (MM/DD/YY) 11/30/2007	TITLE/JOB CLASSIFICATION (Include Range or Level, if applicable) Administrative Assistant/Secretary I	SUPERVISOR NAME Tom Montesonti
HOURS PER WEEK 40	TOTAL WORKED (Years/Months) 7/9	COMPANY/STATE AGENCY NAME State Council on Developmental Disabilities-Area Board 1	SUPERVISOR PHONE NUMBER 707-463-4700
SALARY EARNED \$ 3265.00	Month PER	ADDRESS 505 S State Street Ukiah CA 95482	
DUTIES PERFORMED			

Monitor agency expenditures, reconcile records with agency accounting, define problems, analyze facts and prepare projections and recommendations with supporting material for agency action. Member of multi-agency workgroup composed of representatives from Department of Finance, Department of Social Services and the Organization of Area Boards charged with the task of developing a cost allocation methodology based on General Accounting Office (GAO) guidelines. Provide information and referral to developmentally disabled clients and their families. Program supervisor for special education transition students, design and implement worksite training program, evaluate student/client progress, provide feedback and recommendations to instructional staff. Provide comprehensive pre-employment training; assist with employment placement and follow-up for high school students in special education who are making the transition from school to work, independent living and post secondary education or training. Staff to SB 1270 statewide stakeholder workgroup communicated diplomatically with general public, professionals and interest groups, responsible for all aspects of administrative and logistical support.

REASON FOR LEAVING
N/A

EXAMINATION/EMPLOYMENT APPLICATION

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APPLICANT'S NAME (Last)	(First)	(M.I.)	EASY ID
MORLEY	DAWN	M	

EMPLOYMENT HISTORY (Continued)

FROM (MM/DD/YY) 08/24/1998	TO (MM/DD/YY) 02/24/2000	TITLE/JOB CLASSIFICATION (Include Range or Level, if applicable) Staff Services Supervisor	SUPERVISOR NAME Christine Webb
HOURS PER WEEK 40	TOTAL WORKED (Years/Months) 1/6	COMPANY/STATE AGENCY NAME Mendocino County Department of Social Services	SUPERVISOR PHONE NUMBER 707-463-5627
SALARY EARNED \$ 10.11	PER Hour	ADDRESS 631 S Orchard Avenue Ukiah CA 95482	
DUTIES PERFORMED			

Coordinate the work of a team of office assistants and accounting staff responsible for providing clerical/accounting support to the County CalWorks Program. Perform program policy analysis, and prepare recommendations on procedures, policies and program alternatives in the development of best practices for streamlining tasks. Formulate policy and procedure. Review, monitor and evaluate staff performance based on standard departmental evaluation instruments. Collect, compile and analyze data in order to generate required statistical reports for county and state agencies. Represented the accounting and administrative staff during program development, insuring needed resources were available to staff to complete required tasks as the agency worked to implement new federal and state mandates. Design and edit newsletters and informational brochures designed to address client issues including health and safety, client rights and advocacy and increase public awareness and understanding of developmental disabilities. Worked with persons with developmental disabilities in job development and clients transitioning from public assistance to paid employment. Design and maintain confidential client database.

REASON FOR LEAVING

Accepted position with SCDD-Area Board 1

FROM (MM/DD/YY) 01/30/1991	TO (MM/DD/YY) 04/30/1997	TITLE/JOB CLASSIFICATION (Include Range or Level, if applicable) Associate Tourism/Customer Services Specialist	SUPERVISOR NAME Mary Ellen Reusch
HOURS PER WEEK 40	TOTAL WORKED (Years/Months) 6/3	COMPANY/STATE AGENCY NAME State of Wisconsin	SUPERVISOR PHONE NUMBER
SALARY EARNED \$ 10.00	PER Hour	ADDRESS 200 West Washington Ave. Madison WI	
DUTIES PERFORMED			

Provide information and referral to the public regarding travel and outdoor recreation. Act as initial community liaison in the fields of recreation, tourism and natural resource protection. Respond to inquiries regarding state regulations. Interpret and communicate complex regulation and policy information to a diverse public. Operate back-up fire dispatch center. Coordinate 50 to 100 volunteers in ongoing and special assignment environmental and natural resource protection activities. Work with local organizations to educate groups and individuals about agency policy and activities. Respond to requests for information, prepare correspondence. Conduct security background check for license applicants using secure on-line licensing system. Review permit applications. Design and conduct public interest surveys. Assist state biologists with data collection, tabulation and input data collection into departmental database. Prepare charts and other documentation for mandated reports and public presentations.

REASON FOR LEAVING

Relocation

FROM (MM/DD/YY) 01/15/1985	TO (MM/DD/YY) 04/15/1989	TITLE/JOB CLASSIFICATION (Include Range or Level, if applicable) Community Development Specialist	SUPERVISOR NAME Howard Oppen
HOURS PER WEEK 40	TOTAL WORKED (Years/Months) 4/3	COMPANY/STATE AGENCY NAME United States Peace Corps	SUPERVISOR PHONE NUMBER N/A
SALARY EARNED \$ 0.00	PER	ADDRESS N/A Ndoffene-Senegal(West Africa)	
DUTIES PERFORMED			

Supervise, facilitate, coordinate, develop, implement and evaluate public health and development projects. Analyze cost of proposed projects. Conduct feasibility studies of community development projects, assess resources. Research project proposals and develop and evaluate alternatives, present ideas and information to community and agencies. Compose funding proposals including project description, budget analysis and development. Work with private and government organizations to secure project funding, purchase materials, hire personnel and monitor contractors, negotiate contracts, administer grant funds, provide reports and project updates to international funding and government agencies. Serve as liaison between local population and government agencies. Maintain detailed project files. Review and evaluate existing and proposed public health and development projects. Develop and implement health information programs focusing on prenatal care in the prevention of birth defects. Assess projects and provide technical assistance and training to staff in all facets of project development and administration. Conduct cross cultural seminars and present multi-media programs of overseas experience.

REASON FOR LEAVING

End of Term(s) of Service

EXAMINATION/EMPLOYMENT APPLICATION

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APPLICANT'S NAME (Last)	(First)	(M.I.)	EASY ID
MORLEY	DAWN	M	

EMPLOYMENT HISTORY (Continued)

FROM (MM/DD/YY)	TO (MM/DD/YY)	TITLE/JOB CLASSIFICATION (Include Range or Level, if applicable)	SUPERVISOR NAME
06/01/1981	08/30/1981	Camp Counselor	Jim Ruder
HOURS PER WEEK	TOTAL WORKED (Years/Months)	COMPANY/STATE AGENCY NAME	SUPERVISOR PHONE NUMBER
40	0/2	Wisconsin Badger Camp	N/A
SALARY EARNED		ADDRESS	
\$ 0.00 PER		N/A Prairie du Chien WI	
DUTIES PERFORMED			

Assist individuals with developmental disabilities as they engaged in summer camp recreational activities. Program participants experienced a range of developmental disabilities including: cognitive and physical disabilities, epilepsy, Down's syndrome, cerebral palsy, autism and other developmental disabilities. Groups participating at the camp originated from areas throughout the Midwest and came from schools, adult centers, health care facilities and group homes. Required counselor duties included: nature education, teaching camping/outdoor skills, arts and crafts, assisting with swim instruction, hiking, horseback riding, biking, photography, dance, fishing and music. Provide quality outdoor recreational experiences in a positive natural environment where individuals with developmental challenges learn about their surroundings and realize their full potential. Mentor campers to develop friendships and expand their social skills. Submit progress reports to lead staff and advise camp administrators on recommendations regarding individual program activities and develop needed services and programs as indicated by client interests.

REASON FOR LEAVING

End of Service

FROM (MM/DD/YY)	TO (MM/DD/YY)	TITLE/JOB CLASSIFICATION (Include Range or Level, if applicable)	SUPERVISOR NAME
HOURS PER WEEK	TOTAL WORKED (Years/Months)	COMPANY/STATE AGENCY NAME	SUPERVISOR PHONE NUMBER
SALARY EARNED		ADDRESS	
\$ PER			
DUTIES PERFORMED			

REASON FOR LEAVING

FROM (MM/DD/YY)	TO (MM/DD/YY)	TITLE/JOB CLASSIFICATION (Include Range or Level, if applicable)	SUPERVISOR NAME
HOURS PER WEEK	TOTAL WORKED (Years/Months)	COMPANY/STATE AGENCY NAME	SUPERVISOR PHONE NUMBER
SALARY EARNED		ADDRESS	
\$ PER			
DUTIES PERFORMED			

REASON FOR LEAVING

Supplementary Information

Letters of Recommendation/Reference:

- ❖ Kevin Daly – Former Workability Program Participant
- ❖ Carol Kuhling Barrett – Program Manager
Mendocino County Office Education/Special
Education Local Plan Area WorkAbility/
Transition Partnership Program

Certificates of Recognition/Appreciation

- ❖ State Council on Developmental Disabilities
- ❖ Workability I
- ❖ United States Peace Corps

Date: 1-26-2011

From: Kevin Daly
14 Olga Place
Ukiah, CA 95482
707-467-9164

RE: Dawn Morley
Letter of Recommendation

To Whom It May Concern:

I am Kevin Daly and I have known Dawn Morley for 2 and half years. She works at the State Council on Developmental Disabilities as a Community Program Specialist II, Area 1 Board. I worked for her as an office support person about a year and a half. I believe Dawn to be honest and to have a very strong work ethic. Her strengths are her dedication to her work and her professional manner. What I liked best about Dawn is she is gets along with clients and co-workers, is always helpful, and she is caring.

I believe Dawn Morley will be an excellent and positive team member for your organization.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Daly', with a stylized flourish at the end.

Kevin Daly



January 13, 2011

Area I Developmental Disabilities Board
505 South State Street
Ukiah, CA 95490

Area I Board:

I am writing to recommend Dawn Morley for the position of Executive Director of the Area I Developmental Disabilities Board. I have been the program manager for the Mendocino County Office of Education (MCOE) WorkAbility and Transition Partnership Programs (TPP) for sixteen years. We serve middle school, high school and transition program (18-22 year old) youth with disabilities in all of the school districts in the county, offering work readiness skills, career awareness, work experience and job placement. The Area I Board has provided WorkAbility work experience placements for our students in the Community Transition Program over the years and has participated in our Mendocino Interagency Transition Team (MITT) since 1997.

Dawn has been the Area I Board representative on the MITT since 2007. She has been an active and enthusiastic member of the group, having invaluable input in our meetings. She understands and values the importance of working collaboratively with agencies to help improve the systems that serve our population. She is able to diplomatically address difficult issues. She is liked and respected by the other members of the group. While working with Dawn on our annual Transition Panel that is sponsored by MITT for families and transition-aged youth, I have been impressed with her resourcefulness and organization. She brings to the table a positive attitude, knowledge about the law, local agencies and resources, and expertise and best practices in working with people with developmental disabilities. I highly recommend Dawn for the position of Executive Director of the Area I Board.

Sincerely,

Carol Kuhling Barrett

Carol Kuhling Barrett
MCOE/SELPA WorkAbility/TPP Program Manager

in recognition of

Dawn Morley

We, the California State Council on Developmental Disabilities, do hereby recognize Dawn Morley for the following:

WHEREAS, Dawn Morley has capably served for six years as Administrative Assistant at the Area Board I office in Ukiah, California; and

WHEREAS, Dawn Morley, trains and inspires Workability students to learn job skills; and

WHEREAS, Dawn Morley's experience as a Peace Corps volunteer in Africa has translated into a unique compassion and understanding for people who want to excel and just need a door to be opened; and

WHEREAS, Dawn Morley became the backbone of the SB1270 project, orchestrating the meetings, galvanizing consumers and their families to participate in all the focus groups, helping to craft the final document, working countless hours to meet a tight deadline while the entire time never forsaking her regular workload of assignments;

NOW THEREFORE BE IT RESOLVED that we, the members of the California State Council on Developmental Disabilities, express our sincere appreciation for all Dawn Morley has done to improve the lives of Californians with developmental disabilities, and we rest secure in the knowledge that she will continue to do so in the future.

With respectful appreciation,

The California State Council on Developmental Disabilities

WORKABILITY I

Certificate of Appreciation

Presented To

Dawn Morley, Area Board

In recognition of your belief in Workability I
and commitment to providing training sites
for participating students.

Mendocino County Office of Education

Carol Kuyhling Barrett

A. J. Adams





United States of America

Certificate of Appreciation

is presented to

Dawn M. Bohman

In recognition of dedicated service
and outstanding contributions toward world
peace and friendship while serving as a
Peace Corps Volunteer in
Senegal

Joel M. Ruppe
Director, Peace Corps

Ronald Reagan
President

AGENDA ITEM DETAIL SHEET

ISSUE: Appointment of Executive Director at Area Board 9

BACKGROUND: Welfare and Institutions Code, section 4553 (c) (1) states, in part:

“Each area board shall have an executive director, nominated by the affirmative votes of a majority of the members of the area board, appointed by the executive director of the state council, and approved by the state council...”

ANALYSIS/DISCUSSION: The former executive director of Area Board 9 resigned yearly this year, thus the Board conducted a recruitment process to identify a new executive director. As reflect in the attached minutes from Area Board 9, on March 25, 2011 the board nominated Anastasia Bacigalupo to be appointed as the new director.

Subsequent to the Board’s notification of their action, I interviewed Ms. Bacigalupo, concur with the Board’s nomination and recommend Council approval of my appointment of Anastasia as the new executive director of Area Board 9.

COUNCIL STRATEGIC PLAN OBJECTIVE: Improve the SCDD organization and operations to effectively support the SCDD Vision and Mission and work collaboratively with other pertinent state agencies.

PRIOR COUNCIL ACTIVITY: None

RECOMMENDATION(S): Approve the Council Executive Director’s appointment of Anastasia Bacigalupo as the executive director of Area Board 9 contingent upon receipt of a hiring freeze exemption from the Governor’s office.

ATTACHMENT(S): Minutes of Area board 9 meeting and Anastasia Bacigalupo’s application materials (redacted to remove private information).

PREPARED: Carol J. Risley, May 10, 2011

Area Board 9

Board of Directors' Meeting

200 E Santa Clara Street
Suite 210
Ventura, CA 93001

Meeting Minutes

March 25th, 2011
9:00 am – 5:00 pm

Members Present

Ted Martens, Chairperson
Ron Vasconcellos
Ruth Vasconcellos
Kathleen Gransee
Denise Filz
Connie Risley
Allen Barbee

Members Absent

Sean McAlpine
Yolanda McAlpine

Staff Present

Ruby Villanueva
Mallory Gonzales

Public Present

Leslie Ragle

I. Call to order

The meeting was called to order by Chairperson, Ted Martens at **9:00 am**. It was determined that a quorum exists.

II. Public Input

There was no public input.

III. Closed Session:

The Board went into closed session at **9:30 am** to begin Interviews and deliberation for the position of Area Board 9 Executive Director.

IV. Open Session:

The Board reconvened open session at **5:00 pm**.

- a) *The Board nominated **Anastasia Bacigalupo** for the position of Area Board 9 Executive Director .*
- b) *The board also announced that if for any reason Anastasia Bacigalupo does not accept the job offer for Executive Director, it should then be offered to **Ellen Lewis**.*

V. Adjournment

Ted Martens, Chairperson adjourned the meeting at **5:05 pm**.

ANASTASIA BACIGALUPO

██████████ Venice, CA 90291 ■ Phone ██████████ ■ Email: ██████████

January 31, 2011

Area Board 9 Executive Committee
ATTN: Ted Martens
31324 Via Colinas STE 117
Westlake Village, CA 91362

RE: Area Board 9 Executive Director I Position

Dear Executive Committee Members:

I would like to be considered for the position of Executive Director for Area Board 9. In 2009, I applied for this position and was one of two finalists who interviewed with the executive committee. My interest in the position remains unchanged and I would very much like the opportunity to interview again to show why I am a desirable applicant for the position.

Educational Background

I meet the minimum and preferred educational requirements for the position. I have a Bachelor's of Arts degree in Social Thought/Political Economy with a minor in Latin American Studies and a Juris Doctorate from Whittier Law School. I have been working in public interest law for the almost 9 years and for the past 7 years I have worked on behalf of children and adults with developmental disabilities.

Experience in the Administration of Human Service Programs

I am qualified for this position because I have almost 13 years experience in administration of human service programs, internationally and locally. Prior to law school, I worked as a Peace Corps volunteer in the public health sector in Central America and a children's counselor at a domestic violence center in Arizona.

As a Peace Corps volunteer, I worked with Nicaraguan health officials collaborating on the development and execution of community health initiatives. As a children's counselor, I provided direct services as well as coordinated with social service agencies for the delivery of services and supports to children and women caught up in the cycle of domestic violence.

Since graduating law school, I have held two jobs where I have gained more experience in the administration of human service programs, specifically free

January 31, 2011

Letter of Interest: Area Board 9 Executive Director

Page 2 of 4

legal advocacy services. First, as a legal advocate in East Los Angeles, I assisted clients access their rights to county, state, and federal benefits. In that job, I was charged with the management, program review, planning and outreach for the Immigrant Victims of Crime project.

Presently, as the Clients' Rights Advocate ("CRA") for the Office of Clients' Rights Advocacy ("OCRA"), I provide free legal advocacy services to the consumers of the South Central Los Angeles Regional Center ("SCLARC"). In that role, I perform many tasks related to the management of our law practice. For example, I review our advocacy plan on an annual basis for the purpose of correlating our law practice to the needs of the SCLARC community, strategic planning internally within our agency and externally with community stakeholders, and promote our services through community outreach to consumers and the agencies and organizations that support them.

Aside from my role as CRA, I have been coordinating outreach by our agency on a statewide level for the past 2 ½ years as the OCRA Statewide Outreach Coordinator. As the Outreach Coordinator, I manage OCRA's compliance with Department of Developmental Services in regard to outreach conducted by each of the 21 OCRA offices. I am responsible for the development of all the office's outreach plans, monitoring their progress on a quarterly, semi-annually and annually basis and provide reports to the management teams within OCRA/Disability Rights California ("DRC") as well as the OCRA/DRC boards.

Experience Working with Public Organization and Agencies Serving the DD Community

For the past 7 years, I have worked closely with the public organizations and agencies serving the developmentally disabled ("DD") community in the SCLARC catchment area. Although this list is not exhaustive, here are some agencies and organizations I interface with on a regular basis:

- ARC Mid-Cities
- ARC South Bay
- Autism Speaks
- Fiesta Familiar
- Foundation for Junior Blind
- Harambee Conference
- Jeffery Foundation
- LAUSD Special Education Multi-Advisory Committee
- Loving Your Disabled Child
- Special Needs Network
- Special Olympics
- UCLA Neuropsychiatric Institute
- USC University Center for Excellence in Developmental Disabilities at CHLA

January 31, 2011

Letter of Interest: Area Board 9 Executive Director

Page 3 of 4

Demonstrated Application of State and Federal Laws Entitling Regional Center Consumers to Supports and Services

I have extensive knowledge of the DD service system in California. I am intimately familiar with how county/state/federal government benefits, the Individuals with Disabilities Education Act and the Lanterman Act create a system of services and supports for children and adults with developmental disabilities in California.

Unfortunately, given the state budget crisis, we are faced with an unprecedented task of fighting to maintain the most basic of services within the system. I have endeavored to find ways to insulate consumers and their circles of support from the devastating blows associated with the budget cuts by educating them about the legal protections available within state and federal law.

Ability to Develop and Maintain Relationships with Community Organizations and Agencies.

I have demonstrated that I can develop and maintain positive working relationships with many community organizations and agencies throughout the SCLARC catchment area. With these organizations and agencies, I have focused on developing consensus toward a common goal of supporting consumers in their hopes and aspirations.

Some would say that advocates rarely reach consensus with the regional center; however, with SCLARC that has not been the case. With hard work and concentrated effort over the years, I have been able to develop and maintain a positive dynamic with SCLARC.

Though we do not always agree on a consumer's entitlement to a service or support, I have worked steadfastly to gain the respect of the SCLARC management team. Our office has consistently worked collaboratively with SCLARC to obtain services and supports for our clients from generic resources like Social Security Administration, In Home Supportive Services ("IHSS"), Section 8 Housing, Housing and Urban Development, Medi-Cal, California Children's Services and many school districts within the catchment.

Demonstrated Ability to Work with and for Consumers and their Circle of Support

My passion for the past 7 years has been to provide the best support to consumers in their efforts to gain needed services and supports. I have averaged 5 regional center eligibility cases each year with 100% success rate in winning life-long regional center services for our clients. In terms of services and

January 31, 2011

Letter of Interest: Area Board 9 Executive Director

Page 4 of 4

supports from the regional center, I have a 100% success rate in getting Floor Time therapy and ABA therapy for consumers. With special education, I have been able to resolve issues at the IEP meeting level with school districts in the consumer's favor 95% of time. The remaining 5% represents the cases where I filed due process, prevailed against the district, and won attorneys' fees for our advocacy efforts.

In terms of IHSS, I have a 100% success rate in assisting consumers get additional hours wrongfully denied as a result of poor case management and interviewing skills by IHSS workers. Lastly, given the need in the catchment area, I took on some Supplemental Security Income eligibility cases where regional center clients were arbitrarily denied eligibility. I have successfully litigated 2 cases to the consumer's benefit and I have 3 pending. I believe that all of these case examples illustrate my ability to work for and with consumers and their circles of support.

Overall, I believe I am very qualified for the executive director position based on the aforementioned abilities and strengths. In addition, I possess many desirable qualities- excellent communication skills in English and Spanish, verbally and in writing; the ability to work independently with minimal supervision; and the ability to build consensus among diverse groups.

I hope that I will be able to discuss my qualifications with you during another interview. I can be reached at [REDACTED] if you have any questions about this letter, my resume, or my application.

Thank you for your time and attention.

Sincerely,



Anastasia Bacigalupo

Attch.:

-Resume

-Standard State Application (STD.678)

ANASTASIA BACIGALUPO

██████████ Venice, CA 90291 ▪ Phone ██████████ ▪ Email: ██████████

SUMMARY OF QUALIFICATIONS

Executive and Advocate with substantial experience in the development and implementation of legal advocacy services for people with developmental disabilities. Sound knowledge and understanding of the principles of self-determination, independence, community integration and inclusion for persons within the developmentally disabled community. Able to assess the impact of new laws on the developmentally disabled community and develop appropriate courses of action. Skilled in translating complex legal information into terms readily understood by all stakeholders.

Strategic thinker and problem solver, who navigates comfortably across all organizational levels. Ability to communicate the vision, develop a roadmap with clear goals, and implement the tactics to achieve objectives. Decisive leader with unshakable integrity; engenders trust and builds strong relationships. Polished communicator with impressive presentation skills.

KNOWLEDGE BASE

- | | | |
|----------------------------------|-------------------------------------|--------------------------------|
| ▪ Developmental Disabilities | ▪ Special Education Law | ▪ Relationship Management |
| ▪ Lanterman Act | ▪ Income Benefits Law (SSI, IHSS) | ▪ Presentation / Communication |
| ▪ Health Benefits Law | ▪ Negotiation / Facilitation | ▪ Project Leadership |
| ▪ Strategic Planning / Execution | ▪ Issue Identification / Resolution | ▪ Team Dynamics / Leadership |

PROFESSIONAL EXPERIENCE

OFFICE OF CLIENTS' RIGHTS ADVOCACY, Los Angeles, CA, 2004 - Present

Clients' Rights Advocate

- Legal advocacy for persons with developmental disabilities including assistance in pursuing administrative and legal remedies, and direct representation in selected cases.
- Provide consultation, technical assistance, supervision and training, and support services in the following areas/programs: Supplemental Security Income, In Home Supportive Services, Medi-Cal/Medicare, Federal and State Special Education Law, Developmental Disabilities, the Lanterman Act and Department of Developmental Disabilities Services, including the regional center system.
- Investigate and take action to resolve complaints from or concerning persons with developmental disabilities in residential facilities, regarding abuse and/or unreasonable denial or punitive withholding of rights guaranteed under state and federal law.
- Manage cases, provide community outreach to developmentally disabled children/adults, families and care providers.

Statewide Outreach Coordinator (May 2008 to Present)

- Provide outreach support, information and resources to staff and management of the 21 OCRA offices throughout California.
- Participate in the development and implementation of each outreach plan for staff and management statewide.
- Develop and monitor outreach programming by staff and management to underserved multi-ethnic (English and non-English) language communities.
- Collect data, review and report on outreach activities statewide on a quarterly and annual basis. Create corrective action plans for offices when needed.
- Interface monthly, quarterly and annually with four Disability Rights California regional offices and the Statewide Outreach Committee.

L.A. CENTER FOR LAW AND JUSTICE, Los Angeles, CA, 2002 - 2003

Lead Legal Advocate, Immigrant Victims of Crime Project

- Assisted clients in obtaining access to the family court system; advised clients on restraining orders, legal rights to custody/visitation of their children, and eligibility for services/benefits (welfare, food stamps, SSA programs).
- Managed cases and provided community outreach to children/adults on domestic violence and immigration issues.
- Advised and provided technical assistance/direct representation to immigrant victims of domestic violence in the areas of family law and immigration under the Violence Against Women Act.
- Conducted community outreach presentations and training to potential clients, community groups, and social service agencies. Assisted clients with property rights, support and custody issues, and visa applications.

PRINT OR TYPE — PLEASE SEE INSTRUCTIONS ON BACK PAGE

ANSWER THE FOLLOWING QUESTIONS:

8. Do you meet the minimum and/or maximum age requirements? ☒ YES ☐ NO
9. Do you possess a valid California Driver License? (If "YES", fill in the information below.) ☒ YES ☐ NO
- License# _____ Class: _____ Restrictions: _____

STAFF	DATE PROCESSED
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CODES

EXAMINATION/EMPLOYMENT APPLICATION

STD. 678 (REV. 6/2010) Page 2

APPLICANT'S NAME (Last) BACIGALUPO	(First) ANASTASIA	(M.I.) 	EASY ID
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EDUCATION

DID YOU GRADUATE FROM HIGH SCHOOL?		IF NOT, DO YOU POSSESS A GED OR EQUIVALENT?		IF NOT, ENTER THE HIGHEST GRADE YOU COMPLETED	
<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO	<input type="checkbox"/> YES	<input type="checkbox"/> NO		

UNIVERSITY OR COLLEGE—NAME AND LOCATION, BUSINESS, CORRESPONDENCE, TRADE OR SERVICE SCHOOL	COURSE OF STUDY	UNITS COMPLETED		DIPLOMA, DEGREE OR CERTIFICATE OBTAINED	DATE COMPLETED
		SEMESTER	QUARTER		
University of Massachusetts; Amherst, MA	S.T.P.E.C./Latin Am	8		4 Year	02/1996
Whittier Law School; Costa Mesa, CA	Law	6		Other	05/2002

LICENSES — LIST APPLICABLE LICENSES AND CERTIFICATES INDICATED IN THE EXAMINATION BULLETIN.

(If you are an attorney, please indicate the date you were admitted to the Bar under the Issue Date column, if stated on the examination bulletin.)

LICENSE/CERTIFICATION NUMBER	ISSUE DATE	EXPIRATION DATE	IN THE SPACE BELOW, INDICATE SPECIFIC COURSE REQUIREMENTS NEEDED TO SATISFY REQUIREMENTS FOR THIS EXAMINATION

EMPLOYMENT HISTORY— Begin with your most recent job. List each job separately.

FROM (MM/DD/YY) 08/01/2002	TO (MM/DD/YY) 11/30/2003	TITLE/JOB CLASSIFICATION (Include Range or Level, if applicable) Lead Legal Advocate, Immigrant Victims of Crime Project	SUPERVISOR NAME Tracey Jensen
HOURS PER WEEK 40	TOTAL WORKED (Years/Months) 1/3	COMPANY/STATE AGENCY NAME Los Angeles Center for Law and Justice	SUPERVISOR PHONE NUMBER (323) 980-3500
SALARY EARNED \$ PER		ADDRESS 1241 S. Soto Street, Suite 102 Los Angeles CA 90023	

DUTIES PERFORMED

-Assisted clients in obtaining access to the family court system; advised clients on restraining orders, legal rights to custody/visitation of their children, and eligibility for services/benefits (welfare, food stamps, SSA programs).
 -Managed cases and provided community outreach to children/adults on domestic violence and immigration issues.
 -Advised and provided technical assistance/direct representation to immigrant victims of domestic violence in the areas of family law and immigration under the Violence Against Women Act.

REASON FOR LEAVING

Department of Justice grant funding terminated.

FROM (MM/DD/YY) 01/15/2004	TO (MM/DD/YY) present	TITLE/JOB CLASSIFICATION (Include Range or Level, if applicable) Clients' Rights Advocate/ Statewide Outreach Coordinator	SUPERVISOR NAME Imma Wagster
HOURS PER WEEK 40	TOTAL WORKED (Years/Months) 7/0	COMPANY/STATE AGENCY NAME Office of Clients' Rights Advocacy/ Disability Rights California	SUPERVISOR PHONE NUMBER 714-750-0709
SALARY EARNED \$ PER		ADDRESS 4401 S. Crenshaw Blvd. #316 Los Angeles CA 90043	

DUTIES PERFORMED

-Legal advocacy for persons with developmental disabilities including assistance in pursuing administrative and legal remedies, and direct representation in selected cases.
 -Provide outreach support, information and resources to staff and management of the 21 OCRA offices throughout California.
 -Participate in the development and implementation of each outreach plan for staff and management statewide.

REASON FOR LEAVING

Still currently employed.

Draft
Executive Committee and Subcommittee on Planning Meeting
Minutes
April 12, 2011

Attending Members

Jennifer Allen
Michael Bailey, Chairperson
Ray Ceragioli
Lisa Cooley
Shirley Dove
Marcy Good
Olivia Raynor
Leroy Shipp

Members Absent

Terri Delgadillo
Robin Hansen
Megan Juring
David Mulvaney
Kerstin Williams

Others Attending

Rocio Smith
Carol Risley
Diana Ramirez
Karim Alipourfard
Roberta Newton
Melissa Corral
Michael Danti

I. Call to Order

Michael Bailey, Chairperson called the meeting to order at 1:05 p.m. and established at quorum present at 1:10 p.m.

II. Welcome and Introductions

Members and staff introduced themselves.

III. Strategic Planning Subcommittee

- a. State Plan Goals and Objectives- Olivia Raynor, Chairperson, Subcommittee on Planning reviewed the draft State Strategic Plan goals and objectives with members providing comments and edits on each item. Based upon this input, a revised draft will be prepared and provided to the Council for action at the May meeting. Other technical portions of the plan are being developed by Council staff. The entire draft plan will be posted for public comment as of July 1, 2011, 45 days prior to the required submittal to the Administration on Developmental Disabilities.

IV. Approval of February 8, 2011 Meeting Minutes

It was moved/seconded (Good/Shipp) and carried to approve the February 8, 2011, Executive Committee meeting minutes.

V. Public Comments

There were no public comments.

VI. Financial Update

Michael Danti reported that our spending level is good considering how far along we are in the fiscal year. All area boards are on target and within their allocations. Michael confirmed we have enough cash to make it through this fiscal year. The reduction for 2012 reduction is estimated at .2% per information from ADD. Based upon the 2011 allocation, this would reduce funding by approximately \$14,000.

VII. Committee Updates

a. Legislative and Public Policy (LPPC)

- i. Assembly Bill 594 – Community Care Modernization Act: It was moved/seconded (Good/Dove) and carried to watch AB 594 as recommended by the LPPC.
- ii. Assembly Bill 519 – Educational Provider Restraints: It was moved and seconded (Good/L. Shipp) to support AB 519 with amendments, however following further discussion, this motion was withdrawn and it was moved, seconded (Good/L. Shipp) and carried to watch AB 519. (2 noes)
- iii. Senate Bill 166 – Standardization of Diagnosis and Treatment of Autism: It was moved/seconded (L. Shipp/Dove) and carried to support SB 166 as recommended by the LPPC.
- iv. Senate Bill 309 – Child Day Care Act: Extend school age for individuals with developmental disabilities: It was moved/seconded (Dove/Cooley) and carried to watch as recommended by the LPPC.
- v. Assembly Bill 479 – IHSS Reform: It was moved/seconded (Good/Dove) and carried to watch AB 479 as recommended by the LPPC.
- vi. Assembly Bill 518 – Elder and dependent adult abuse: It was moved/seconded (Good/Dove) and carried to support AB 518 as recommended by the LPPC.

- vii. Assembly Bill 254 – Employment First Policy: It was moved/seconded (L. Shipp/Dove) and carried to support the intent of AB 254 as recommended by the LPPC.
- viii. Senate Bill 382 – Developmental services: regional services: complaints: It was moved/seconded (L. Shipp/Good) and carried to support the concept in SB 382 as recommended by the LPPC.
- ix. Assembly Bill 1244 – The Lanterman Act: Implementation of individual choice budgets for regional center consumers: It was moved/seconded (Good/L. Shipp) and carried to support AB 1244 as amended on 3/31/2011.

b. Employment First

Olivia Raynor, Chairperson, Employment First Committee reported that the draft Employment First report is in the development stage and will be presented for action by the Council at the May meeting. The report will include an employment first policy that ideally would be amended into Assembly Bill 254.

VIII. NBRC Waiver Request

North Bay Regional Center requested a waiver for a board member pursuant to the California Code of Regulations, Title 17, Section 54524, which states, both the local area board and State Council must approve or disapprove conflict of interest.

Melissa Corral brought this request to the Executive Committee recommending that SCDD adopt the position of Area Board 4 which is to approve the waiver. Following review of the proposed limitations to address the conflict of interest and discussion, it was moved/seconded (L. Shipp/Dove) to approve the COI waiver. (4 ayes, 4 noes) The motion failed.

IX. Proposed 2012 Meeting Schedule

It was moved/seconded (Good/L. Shipp) and carried to approve the 2012 meeting dates as proposed with one meeting to take place in Southern California.

X. Chairperson's Report

Leroy Shipp talked about the need for success stories, perhaps on the web page, about consumers and families.

XI. Personnel Update

Carol Risley reported that the Council continues to await approval of hiring freeze exemptions and appointments by the Governor. It is becoming increasingly difficult to achieve successes without the staffing necessary to carry out the Council's desired activities.

XII. Agenda for May Council Meeting

California State Strategic Plan- approval of goals, objectives, strategies.

Employment First Report- due to Governor and Legislature by July 1, 2011

Appointment of AB 9 Executive Director- AB 9 has interviewed and made a recommendation to Carol; Carol has interviewed and concurs with AB 9's recommendation. The appointment must be approved by the Council.

Appointment of AB 1 Executive Director- AB 1 has interviewed and made a recommendation to Carol; Carol concurs with AB 1's recommendation. The appointment must be approved by the Council.

Legislation- LPPC position recommendations

Employment presentation- previously planned for last meeting and delayed to May.

XIII. Adjournment

Meeting was adjourned at 4:30 p.m.